

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 Before The Honorable Virginia K. DeMarchi, Magistrate Judge

4  
5 HIGHTOWER, )

6 Plaintiff, )

7 vs. )

No. C 20-03639-VKD

Related Case C 20-03642-VKD

8 CELESTRON ACQUISITION, LLC )

9 et al., )

10 Defendants. )

11 San Jose, California

12 Tuesday, August 1, 2023

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
14 RECORDING 10:20 - 12:02 = 1 HOUR, 42 MINUTES

15 APPEARANCES:

16 For Plaintiff:

BraunHagey & Borden, LLP

351 California Street

Floor 10

San Francisco, California

94104

17 BY: MATTHEW B. BORDEN, ESQ.

18 RONALD J. FISHER, ESQ.

19 Cotchett Pitre & McCarthy, LLP

20 840 Malcolm road

21 Suite 200

22 Burlingame, California 94010

JAMES G. DALLAL, ESQ.

23  
24 (APPEARANCES CONTINUED ON NEXT PAGE)  
25

1 For Defendants:

Frost, LLP  
10960 Wilshire Boulevard  
Suite 1260  
Los Angeles, California 90024

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3

4

BY: CHRISTOPHER L. FROST, ESQ.  
JOHN D. MATTA, JR., ESQ.

5 Transcribed by:

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7

Echo Reporting, Inc.  
Contracted Court Reporter/  
Transcriber  
[echoreporting@yahoo.com](mailto:echoreporting@yahoo.com)

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1 Tuesday, August 1, 2023

10:20 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE COURT: Calling cases 20-CV-3639, Hightower  
5 versus Celestron Acquisition, LLC et al, on for discovery  
6 hearing, and case 20-CV --

7 THE CLERK: Sorry, I'm just telling them they can  
8 sit down.

9 THE COURT: Case 20-CV-3642, Spectrum Scientifics,  
10 LLC et al versus Celestron Acquisition, LLC et al, on for  
11 discovery hearing.

12 If the parties could state their appearances, please,  
13 beginning with plaintiffs' counsel.

14 MR. BORDEN: Good morning, your Honor. Matt  
15 Borden on behalf of direct purchaser plaintiffs.

16 THE COURT: Good morning.

17 MR. FISHER: And Ronald Fisher, also on behalf of  
18 the direct purchaser plaintiffs, your Honor.

19 THE COURT: Good morning.

20 MR. DALLAL: Good morning, your Honor. James  
21 Dallal, Cotchett, Pitre, and McCarthy, on behalf of the  
22 indirect purchaser plaintiffs.

23 THE COURT: Okay. Good morning.

24 MR. FROST: Good morning, your Honor. Christopher  
25 Frost and John Matta from Frost LLP, on behalf of the

1 defendants.

2 THE COURT: Okay. Good morning. All right. We  
3 have a full agenda this morning. On my list are to discuss  
4 what remains of the dispute about transactional data. Then  
5 we'll talk about the deposition of Mr. Cannon (phonetic),  
6 and then finally discuss deposition scheduling more broadly.  
7 And I plan to take the items in that order.

8 So, first, with respect to the defendants' production  
9 of transactional data, I have the status report that you  
10 shared with me. And I just wanted to sort of share what I  
11 understand the issue is and then get your updates, if there  
12 are any, about where things stand.

13 So on the Nantong Schmidt data, when we were at the  
14 hearing on July 18th, the defendants shared with the Court  
15 and with the plaintiffs that Nantong Schmidt doesn't  
16 maintain cost data on a product-specific basis or a  
17 transaction basis and didn't maintain the data on a weekly  
18 or monthly basis but only on an annual basis, and that there  
19 was some effort being undertaken by the client directly to  
20 summarize the information that was available, and that  
21 potentially a witness with knowledge, Mr. Son (phonetic),  
22 could testify about that.

23 So I understand from the report that Nantong Schmidt  
24 has produced a spreadsheet that summarizes some costs on an  
25 annual basis for the period of 2016 to 2022. And I'm not

1 sure about those dates, but that there was a spreadsheet  
2 produced. So I would like to understand from the defendants  
3 what exactly was produced on July 21st.

4 MR. FROST: That is correct. It was exactly the  
5 report as you've mentioned it. 2016 is when the company  
6 started. And so we've given them the information we have up  
7 to current.

8 THE COURT: Okay. And do the plaintiffs agree  
9 with the characterization that that's what's been produced?  
10 Who's going to speak first on behalf of -- I'll turn to Mr.  
11 Dallal. He looks like he's on deck here.

12 MR. DALLAL: We can agree that there was a  
13 spreadsheet produced that covers that period.

14 THE COURT: And it covered what you expected from  
15 the hearing to be produced? I mean, I took notes about what  
16 -- and I have the transcript -- about what was represented  
17 would be produced, and it seems like that was what was  
18 produced.

19 MR. DALLAL: We expected there to be a summary  
20 information produced and for the underlying data to be made  
21 available. So we're waiting on that second piece.

22 THE COURT: Okay. So we're going to talk about  
23 the underlying data. Let me ask the DPPs if they agree that  
24 the summary was produced.

25 MR. BORDEN: We agree, your Honor, that a summary

1 was produced, yes.

2 THE COURT: Okay. As expected. Okay. So now the  
3 issue is the underlying data. And I understand that the  
4 plaintiffs want access to the source material.

5 MR. DALLAL: That is correct, your Honor.

6 THE COURT: And have asked that to be produced or  
7 made available by August 11th. Okay. So where do we stand,  
8 from the defendants' perspective, on making the underlying  
9 data available?

10 MR. FROST: We're working on it right now. It's  
11 actually going to take weeks. It's not an issue that we can  
12 just produce that quickly, because the source information is  
13 spread over a number of locations, and we're trying to have  
14 the client track that down now.

15 THE COURT: But this was the source material that  
16 your client just used to prepare the summary. So why does  
17 it need to be tracked down? Why is it not -- when I had  
18 your colleague in front of me, I said, "Your client is  
19 looking at it now. Keep track of it, so that if somebody  
20 wants to go look at an invoice by invoice collection of  
21 material to satisfy themselves that the summary is accurate,  
22 they can." So I'm a little bit surprised to hear that it  
23 needs to be tracked down.

24 MR. FROST: Well, let's be clear. If we're  
25 talking about specifically the information that he looked at

1 in preparing that summary, yes, we can make that available,  
2 whatever that may be. But I understand there's -- that the  
3 reach of what they were asking for was greater than that.  
4 But if that's all we're talking about, then whatever he  
5 looked at in preparing the summary, whatever he has, we can  
6 make available.

7 THE COURT: I'm not sure what the other  
8 information is, because I understand the plaintiffs to be  
9 asking for -- what's the source material for the summary?  
10 So what else is there?

11 MR. FROST: In terms of what he specifically  
12 looked at to prepare the summary, that -- we can make that  
13 available.

14 THE COURT: What else would need to be tracked  
15 down? What do you -- what do you have in mind when you  
16 remarked that material would need to be tracked down? I'm  
17 trying to figure out what's the delta between what's  
18 available now and what you imagined the plaintiffs wanted,  
19 which -- I'm trying to figure out if they do want it.

20 MR. FROST: So I'm probably overthinking in  
21 response to your question.

22 THE COURT: Okay.

23 MR. FROST: If the question is that the plaintiffs  
24 want to see the information that actually went into this  
25 spreadsheet, we can make that available.

1 THE COURT: Okay. And is it -- can it be made  
2 available electronically? Like, put it in a secure share  
3 room, people can look at it, or is it paper?

4 MR. FROST: Yeah. We're trying to find out now.  
5 I don't have an answer to that question. And one of the  
6 problems that we're struggling with is the fact that we're  
7 trying to decipher and determine what actually is considered  
8 state secret by the Chinese government, and so we don't  
9 cross -- you know, create criminal activity for our client.  
10 And that's a complicated issue that we're working on now.  
11 So I don't know exactly the parameters of how we can produce  
12 it, but I'm working on it.

13 THE COURT: Okay. So the plaintiffs have asked  
14 for access to the source material by August 11th. So  
15 that's, you know, a little less than two weeks from now. So  
16 when do the defendants expect to be ready to provide access  
17 to the material that can be accessed legally?

18 MR. FROST: I think if we can say August 25th and  
19 just -- for two more weeks. The Taiwanese depositions are  
20 not going to start until mid-September. And so I think that  
21 should give us plenty of time to sort out the issue. If I  
22 tell you August 11th, I'm going to fail, and we're going to  
23 have a problem, and I don't want to walk into that mess.

24 THE COURT: Well, here's what I don't want to have  
25 happen. I don't want to have a communication on August 25th



1 that says we can't provide any of it because it's illegal  
2 under Chinese law.

3 MR. FROST: No, no, no.

4 THE COURT: So if that issue can be prior -- if  
5 you can figure out if that's a problem and address it with  
6 the plaintiffs and see if you can work it out. If there is  
7 an issue of legality, maybe there's some workaround to it.  
8 But I don't want it to wait until August 25th, so -- okay.

9 MR. FROST: I agree with that, your Honor. I  
10 don't, either.

11 THE COURT: Okay. So let me hear from the  
12 plaintiffs about the suggestion that by August 25th the  
13 defendants expect to be able to make the source material  
14 available for inspection.

15 MR. DALLAL: So we're surprised to learn of the  
16 issue of the potential sensitivity according to these  
17 unidentified regulations of the Chinese government. We're  
18 not saying that we have any particular insight into whether  
19 or not that will be a factor. We do think if that's going  
20 to be a factor, that issue should be front-loaded and that  
21 the defendants should substantiate what they mean and why  
22 exactly that means they can't produce things.

23 We would prefer, of course, to have the material  
24 earlier. We think August 11th is reasonable. If they say  
25 they can't do it by August 25th, you know, our concern is

1 the same as the Court's that that date is going to slip as  
2 well. So I think perhaps there could be some structure put  
3 in place in advance of that date to let us know if there's  
4 going to be an issue involving Chinese regulations, a  
5 deadline to state any issues in that vein that exist.

6 But if we're reliably going to get it by August 25th  
7 and we can't reliably get it by August 11th, then we're not  
8 in a position to object to August 25th, if that's the date  
9 when it's actually possible.

10 The other aspect of this is that there's additional  
11 transparency we're looking for in the bucket of the  
12 interrogatory response --

13 THE COURT: I'll get to that.

14 MR. DALLAL: -- so we can get to that, yeah.

15 THE COURT: I asked for that, because I knew this  
16 question was coming, so -- okay. Do the DPPs have anything  
17 they would like to add on the question of production of  
18 underlying source material and surfacing -- the issue of  
19 Chinese regulations prohibiting its disclosure?

20 MR. BORDEN: Yeah, maybe just a couple of points,  
21 your Honor. The first point being -- is when we were here  
22 last time, I think the Court was pretty vehement about  
23 asking, you know, what are the underlying documents that  
24 they're compiling them from? And that's something we would  
25 still like to know and something that they can tell us what

1 it is right now, because I think that would be, you know,  
2 really helpful in terms of us trying to understand if the  
3 production is complete or not or whether we have objections  
4 to it or what they're doing exactly. So I think that would  
5 be particularly useful. This is, you know, probably the  
6 largest telescope manufacturer in the world for these kind  
7 of consumer telescopes. So the idea that they don't have  
8 any of this information readily available is somewhat  
9 mysterious to us.

10       The second thing on this whole state secrets, you know,  
11 Chinese law thing, we concur with the IPPs. We also note  
12 that this was never raised as an objection, and it's  
13 probably waived, and, you know, we've been asking for this  
14 information for a couple of years, and to hear this sort of  
15 come up for the first time is a little bit troubling to us.  
16 I think that it -- I don't know how the cost of a telescope  
17 could somehow be a state secret, but -- those are the two  
18 observations I have about it.

19       THE COURT: Okay. Thank you. So here's my  
20 suggestion for how we should proceed here. August 11th is a  
21 Friday. It's a week from this Friday. And what I would  
22 like to have by August 11th is a joint discovery letter on  
23 the question of what categories of documents are not able to  
24 be shared in any way by the defendants because of some  
25 Chinese state secret or regulation or something or other,

1 whatever it is that's the barrier.

2 I would like to have that letter filed on that day,  
3 which means that you have to work backwards and confer, and  
4 there has to be a communication from the defendants about  
5 what the categories of information are that are of concern  
6 and that might be subject to these regulations. So that has  
7 to be done, I would imagine, by -- well, I -- by this  
8 Friday, at the latest, so that you have the time to confer  
9 and then prepare something. I do not want a unilateral  
10 discovery brief from anybody. I want a joint discovery  
11 dispute submission.

12 But, otherwise, the documents will be -- the documents  
13 that can be made available will need to be made available by  
14 August 25th. And, hopefully, if there's some ruling  
15 required by me, not sure how I'm going to do that if the  
16 question is interpretation of Chinese law -- but I'll see  
17 what you all say, and then I'll try to give you some kind of  
18 guidance between August 11th and August 25th, so that by the  
19 time August 25th comes around, you can have what you can  
20 have.

21 But I think also plaintiffs should keep in mind, and  
22 we'll get to the interrogatory in a moment, about whether  
23 the juice is worth the squeeze. If what we can obtain is --  
24 this summary is what we're relying on, from the defendants'  
25 perspective, and they're going to answer the rest of the

1 questions in the interrogatory number five, or we're going  
2 to have a discussion about that, because I recall -- at  
3 least the IPPs' position at the last hearing was, "We just  
4 need to know what it is. Somebody needs to be done, and the  
5 ambiguity needs to be over." So you may thus decide that  
6 you're going to be done with the information that you have  
7 in summary form. But I'll leave that up to you after you've  
8 conferred. Okay. So I'm going to put this in an order, but  
9 August -- yeah. Go ahead, Mr. Frost.

10 MR. FROST: Your Honor, if I can -- I'm sorry to  
11 interrupt. Could I make a suggestion? Can we just agree  
12 that that's August 14th, so the Monday instead of the  
13 Friday, so we have a couple of more days to actually work  
14 through the process, the back and forth taking a full week  
15 is going to eat up most of that time anyway.

16 THE COURT: All right. So August 14th is the  
17 Monday. I am contemplating doing this without a hearing, by  
18 the way, because it would be pretty tight for me to have you  
19 in on the 15th if I get something on the 14th. That's just  
20 not good for my preparation. So I'm fine with the 14th. As  
21 I said, I would like to have the issue crystallized and not  
22 people talking past each other. So if the 14th allows you  
23 to do that, fine. Okay. So I'll have it be the 14th then  
24 for the joint submission.

25 MR. FROST: Thank you, your Honor.

1 THE COURT: All right. So let's consider  
2 interrogatory number five.

3 Now, this was important to our discussion last time  
4 because at least the plaintiffs took the position -- I  
5 believe it was -- Ms. Salinas (phonetic) explained that it's  
6 -- it would be helpful to have the answers to this  
7 interrogatory so that it could be clear what the defendants'  
8 position was on what was and was not available.

9 Okay. So as I read your joint report, what I  
10 understand the problem with the defendants' supplemental  
11 response to number -- interrogatory number five is that it  
12 leaves unanswered -- clearly leaves unanswered the parts of  
13 that interrogatory that ask for an explanation about how  
14 each cost type is calculated for the product line, what the  
15 overall cost percentage of each cost type is for the product  
16 line, and what the English or Chinese names are that are  
17 used to refer to the cost type. Do I have that right, Mr.  
18 Dallal?

19 MR. DALLAL: That is correct, your Honor.

20 THE COURT: Okay. Those are the three things that  
21 are missing. I've looked at the interrogatory response. I  
22 think that's not clearly answered. It seems to me the  
23 simplest course is for defendants to just answer those  
24 questions. And, you know, if the answer is, "We don't  
25 calculate cost type by product line," just say that. But

1 let's not have a fight about whether you have or haven't  
2 answered. Because if they say it's not clear to them, and  
3 I'm telling you it's not clear to me, this is the solution  
4 to the problem, is to just supplement it and be absolutely  
5 clear. Any problem with that?

6 MR. FROST: No, your Honor.

7 THE COURT: Okay. So --

8 MR. FROST: And with the Court's permission, we  
9 could do that by the same deadline of August 14th.

10 THE COURT: Well, do you need until August 14th to  
11 do that?

12 MR. FROST: I don't know the answer to that, but I  
13 don't want to have to come back asking for relief if it  
14 takes us long -- that long to get the information. We are  
15 working through it. If you tell me you want it earlier,  
16 I'll make it earlier. I'm just trying to give us enough  
17 room, with everything else happening, to actually get that  
18 done.

19 THE COURT: Okay. Well, it shouldn't be any later  
20 than August 14th, and I would expect it to be not that hard  
21 to do, given that you've already produced the underlying  
22 summary, which presumably has names in it, English or  
23 Chinese or both. And based on the representations made to  
24 me at the hearing on July 18th, I think I know the answers  
25 to the first two questions, and they just need to be in a

1 verified interrogatory response.

2 MR. FROST: That's fine.

3 THE COURT: So I'll order that that interrogatory  
4 answer be supplemented by August 14th.

5 MR. FROST: And just so you understand from our  
6 position, we will be doing so before August 14th.

7 THE COURT: Okay.

8 MR. FROST: I just don't want to walk myself into  
9 violating a court order.

10 THE COURT: All right.

11 MR. FROST: But as soon as we can reasonably do  
12 it, they will have it.

13 THE COURT: Okay. That's fine. Now, does that  
14 address the plaintiffs' concern about interrogatory number  
15 five?

16 MR. DALLAL: Yes, your Honor.

17 THE COURT: Okay. All right. Celestron margin  
18 data. Okay. So here's what I understand from your joint  
19 report. The plaintiffs say that the documents that the  
20 defendants identified as price component reports are not  
21 price component reports.

22 IPPs say they think they've identified the correct  
23 Bates ranges for the reports but that those documents only  
24 cover the period of time from 2015 to 2022, and they're  
25 missing reports for the period 2005 to 2014. And IPPs want



1 the missing data by August 11th.

2 DPP say they need an additional amount of time to  
3 review the reports with their expert who's not available,  
4 but, in any event, they want the general ledgers.

5 So defendants say they didn't realize that they had  
6 identified the wrong reports. And that just kind of blew my  
7 mind, because -- I mean, it's like a keystone cop kind of a  
8 situation, after all of this, like, effort and repeated  
9 discovery conferences and briefing on this issue, to not  
10 have checked, and then to say, "Well, we didn't even know  
11 until we saw their half of the report," it just -- you got  
12 to check. I mean, this carelessness has got to stop.

13 So, anyway, I hope by now the defendants have had an  
14 opportunity to check and figure out what happened. And I  
15 would like to get an update on what the price component  
16 reports are, whether they -- they are available and have  
17 been produced for the entire range. And if not, why not?

18 MR. FROST: So the issue with -- so the answer is,  
19 with respect to 2015 to 2022, they have been produced. The  
20 problem that we have for the earlier time period is we used  
21 a different system. We used the SiteLine system -- a system  
22 called SiteLine instead of SAP, and we did not track the  
23 information in the same way. And there are -- they do not  
24 exist, any of the reports, in the manner in which they're  
25 looking for them. So we have given them what we have, and

1 we can -- have confirmed they have it.

2 Now, with respect to the issue. And so I'm going to  
3 make a suggestion. First of all, the suggestion that we  
4 have to give them all of the general ledgers seems to us to  
5 be absurd. It's not going to help them anyway in terms of  
6 this regard.

7 My suggestion would be that on August 7 and 8, because  
8 we're still trying to understand even what they're looking  
9 for in terms of margin, because we don't calculate margin  
10 the way that they think we do, and we keep trying to explain  
11 that. So on August 7 and 8, they're taking the deposition  
12 of Paul Roth, who's the chief financial officer, who will be  
13 able to answer any and all questions they have about any of  
14 this, and we can do it in one setting. And if they have any  
15 follow up questions or any data they want us to track down  
16 specifically, we'll be happy to do it. But we think we have  
17 given them everything based on what we understand them to be  
18 asking for. We just didn't keep it in the form they're  
19 talking about or any comparable report prior to 2015.

20 THE COURT: Okay. So let's just start with the  
21 2015 to 2022 period of time for which there are price  
22 component reports. Have defendants identified the correct  
23 Bates numbers to the plaintiffs for those reports?

24 MR. FROST: Yes.

25 THE COURT: Okay.

1 MR. BORDEN: Your Honor --

2 THE COURT: Yes.

3 MR. BORDEN: So we did -- we were able to talk to  
4 our expert yesterday, and the -- these price component  
5 reports don't have -- they have a generalized kind of  
6 concept of margin, but they've baked in overhead costs and  
7 other fudge factors that we could understand, you know, what  
8 they were if we actually had the general ledger. So that's  
9 the first point is they should just produce --

10 THE COURT: That's not the first point. The first  
11 question I'm trying to get an answer to is, do you have the  
12 Bates ranges -- the correct Bates ranges for the price  
13 component reports?

14 MR. BORDEN: I don't know if these -- if what  
15 they've produced is complete or not. We have -- our expert  
16 was able to go through the production and pulled out some,  
17 but I'm not sure if they're complete or not.

18 THE COURT: Okay. Mr. Dallal, you're the one who  
19 said you thought you had figured it out. So do you have the  
20 Bates ranges for the price component reports that cover 2015  
21 to 2022?

22 MR. DALLAL: We believe so. Yes, your Honor.

23 THE COURT: Okay. And can you calculate profit  
24 margin from those reports, which is what you suggested you  
25 could do from the joint status report?

1 MR. DALLAL: For the moment, yes, we -- our  
2 experts -- as of the moment of this joint status report, and  
3 I think that had only become the case a day or two before.  
4 But our experts believe that based on their review, they  
5 would be able to calculate margins for the later period,  
6 yes.

7 THE COURT: Okay. Now, the point about the  
8 adequacy of what's been produced so far with respect to what  
9 your experts need and what you all need to establish your  
10 case.

11 So, Mr. Borden, you were saying you think the general  
12 ledgers are superior. Why are they superior?

13 MR. BORDEN: So -- well, I think that the  
14 different discovery requests that we made -- asked for is  
15 for, you know, documents sufficient to identify your actual  
16 margins. The price component reports have things like  
17 overhead built into them. And that might be sufficient for  
18 the type of analysis that the IPPs might want to do, but  
19 it's not sufficient for the analysis that we need to do, but  
20 we need to understand the actual real margins without that  
21 other information, which can be used to, you know, bring the  
22 margins up or down. That information is available in the  
23 general ledger. We -- when we talked to Mr. Ayers  
24 (phonetic), he said that Celestron calculates its own  
25 margins internally based on the general ledger, which is why

1 we've been insistent upon them producing it. We have a  
2 number of discovery requests that ask for it. And that's  
3 actually -- I mean, I -- just from a practical standpoint,  
4 Occam's razor, give us the general ledger. Mr. Frost says  
5 it won't be useful to us. Our expert disagrees. He can  
6 sift through it, and we can just have the data that we need  
7 and put this issue to bed.

8 THE COURT: All right. Let me go back to Mr.  
9 Frost. And here's the concern I have about just sort of  
10 having a deposition and just waiting to get information from  
11 the witness. Usually, you want to have the documents before  
12 you have the witness' deposition, so the witness can explain  
13 the items in the document to the questioning party. So it  
14 seems to me a little bit backwards to -- what you're  
15 suggesting. It seems like you should have the documents  
16 first so that someone can be asked questions about them.

17 I don't understand the defendants' -- Celestron's  
18 resistance to producing the general ledgers. I just don't  
19 understand it. It does seem that IPPs are satisfied with  
20 the kind of information that's in the price component  
21 reports, but they don't have the information for the earlier  
22 time period because it's not available. If it is available  
23 in the general ledger, I said at the last hearing I was  
24 going to make defendants produce it, because the margin is  
25 important information.

1 I understand that the DPPs have asked for various --  
2 you know, different slices of margin, gross margin, net  
3 margin, you know, all these different flavors of margin,  
4 which they say they can't get from the price component  
5 report. So I just don't understand the resistance to  
6 producing the general ledger if it's the only other document  
7 that contains this information or information that will  
8 allow the calculation of margin.

9 MR. FROST: So the problem that we're having, to  
10 be perfectly candid -- and if the Court ordered us to  
11 produce it, we will do it. I don't think they need it. And  
12 we would be happy to have a call -- an informal call, where  
13 they could talk to Paul Roth ahead of his deposition to get  
14 an answer to that question to understand why they're wrong.  
15 We could even do something like that.

16 I can tell you it makes me really nervous, and it makes  
17 the client really nervous to turn over their general ledger  
18 -- the entire general ledger for our company to counsel who  
19 also is currently representing our primary competitor,  
20 Orion. That's an issue we're going to get to when we talk  
21 about the Amir (phonetic) Cannon situation. It makes us  
22 very nervous. They're using depositions in this case to  
23 garner information for that litigation. And with that we  
24 are very uncomfortable about the idea of giving our entire  
25 general ledger to counsel for our competitor, even with the

1 protective order in place.

2 THE COURT: But haven't you already given all  
3 kinds of other sensitive information from your clients to  
4 the lawyers for the DPPs in this case? Like, how is a  
5 general ledger, like, special?

6 MR. FROST: Because it is literally a transaction  
7 by transaction account of the firm -- the entire firm, the  
8 way it operates, its business practices, all of that. It's  
9 the keys to the kingdom. That's what the general ledger is.  
10 And so when they have all the underlying transactional data,  
11 this is the only thing --

12 THE COURT: But they don't. They don't have all  
13 the underlying transactional data is the problem. At least  
14 that's what I'm being told is they don't have something from  
15 which they can calculate, on their own, profit margin.

16 MR. FROST: And we disagree with that.

17 THE COURT: Okay. What have you -- so last -- at  
18 the last hearing -- well, you weren't here. Your colleague  
19 was here. He told me the price component reports are the  
20 documents from which margin can be calculated.

21 MR. FROST: That is correct.

22 THE COURT: And now you're telling me that those  
23 don't exist for this earlier time period?

24 MR. FROST: Correct.

25 THE COURT: So what exists for the earlier time

1 period, apart from the general ledger?

2 MR. FROST: The transactional data we have already  
3 provided them.

4 THE COURT: When you say "the transactional data,"  
5 what are you referring to?

6 MR. FROST: All of the reports from the SiteLine  
7 system that have the entire breakdown of every single  
8 transaction.

9 THE COURT: And those include a way to distinguish  
10 overhead from materials' costs, from labor, from whatever  
11 else might be there in the mix?

12 MR. FROST: I believe that is correct.

13 THE COURT: You believe that's correct?

14 MR. FROST: Yes.

15 THE COURT: Okay.

16 MR. FROST: Look, if it will make the Court feel  
17 better, we'll produce the general ledgers.

18 THE COURT: It's not about making me feel better.  
19 It's about actually providing the information that they need  
20 and that we've been debating for months on this issue. So  
21 what I think -- what I think you need to do, at a minimum,  
22 if you want to not produce the general ledger, and I  
23 understand why it's a sensitive thing, it's a sensitive  
24 document, very comprehensive, the general ledger would be --  
25 you have to do more by way of supporting your position that



1 they don't need it, meaning you have to be able to say,  
2 "Here are the Bates numbers for the documents that have the  
3 information from which you can make these calculations."  
4 And when I -- and I want to be very precise because I'm --  
5 do not have the underlying material, but I'm looking at the  
6 summary that was included that references the request for  
7 production. This is in the joint report at docket -- let's  
8 see, which one is this? This is docket 355 in case number  
9 20-3639. But DPPs' position identifies RFP-19 and RFP-109  
10 to Celestron. And it sounds to me that Celestron has  
11 committed to producing documents sufficient to show the  
12 information. And, for example, 109 is gross profits,  
13 operating profits, net profits, cashflow reports, EBITDA  
14 reports, and profit and loss statements.

15       So, you know, if you've committed to produce documents  
16 sufficient to show those profit margins for U.S. sales 2005  
17 forward, then you need to do that. And I think the way to  
18 resolve this problem, when they say they don't have it and  
19 you say that they do, is to identify the documents for them.  
20 Now -- you know, so it's a -- you're between a rock and a  
21 hard place, because, ordinarily, I don't require a party to  
22 curate its own production for the other side, but I can't  
23 resolve the dispute without, you know, actually having you  
24 tell me that the documents already exist and have been  
25 produced and that all this information can be gleaned from

1 them.

2       So that's the difficulty that I have, because they tell  
3 me they don't have it. They can't figure it out from the  
4 documents that they have from you already, and they need the  
5 general ledger. So, you know, one possibility here also is  
6 produce, you know, an example of the general ledger. If you  
7 think they don't need it and don't want it and it would not  
8 be useful for them, you could produce a page or a month's  
9 worth or what -- I don't know how it's organized, but  
10 whatever an example -- a sample might be, you could produce  
11 it, and then you could have a conversation about it, and  
12 perhaps you -- and maybe you put your witness on an informal  
13 phone call not to be recorded and not to be treated as a  
14 deposition, and you talk about it. But I'm not confident  
15 that's really going to get you there. So those are my  
16 suggestions.

17           MR. FROST: So we -- what we will do is, we will  
18 produce --what's today?

19           THE COURT: The 1st.

20           MR. FROST: We'll get them by this Friday an  
21 example of the general ledger for a three-month period of  
22 time, and we will plan on having a phone call with them no  
23 later than Friday of this week so we can talk through what  
24 it is that they've seen. That way, we can accomplish all of  
25 this in the period of time before Paul Roth's depo starts

1 next Monday.

2 THE COURT: Okay. And let me just -- just to be  
3 clear about your concerns about sharing the general ledger  
4 information with DPPs' counsel -- and I'm just -- I'm  
5 acknowledging that you have the concern. I'm not saying  
6 that it's meritorious, but I'm just acknowledging that you  
7 have it. Is there a way to produce the general ledger that  
8 is specific to the product lines at issue, the time periods  
9 at issue, and U.S. sales, and the information that will be  
10 necessary to calculate the profit margins that are asked for  
11 without revealing other things that your client finds  
12 particularly sensitive?

13 MR. FROST: It will, as I understand it, be a  
14 remarkably cumbersome effort in redaction.

15 THE COURT: I see.

16 MR. FROST: But I will look into it.

17 THE COURT: Well, it -- it's just an option that  
18 you may consider, but, you know, it can't be done in such a  
19 way that it makes the document unusable, so --

20 MR. FROST: I agree with that.

21 THE COURT: Okay. Let me hear from the plaintiffs  
22 on Mr. Frost's suggestion for how to proceed.

23 MR. BORDEN: Sure, your Honor. I think it  
24 wouldn't take them very long to produce the general ledger  
25 because they already have the general ledger. They use it

1 as part of their operations, so -- but what I think would be  
2 helpful is maybe for like a couple of year period, maybe  
3 2019 and 2020. I think those would be good years for the  
4 general ledger. I think -- you know, we're happy to get on  
5 the phone with Mr. Roth. I -- you know, I would like to get  
6 the general ledger information a little bit sooner, like  
7 those couple of years. Those shouldn't be very commercially  
8 sensitive because that's already, you know, a couple of  
9 years old. Like, I would think that the most commercially  
10 sensitive stuff would be the things that are going on with  
11 their business right now.

12 And that said, you know, just -- I'm sure you have lots  
13 of trade secret and patent litigation that's before you all  
14 the time, where they have, like, really legitimate concerns  
15 about competition. People produce stuff under protective  
16 orders in this case. Lawyers follow protective orders.  
17 I've never violated any protective order or nothing like  
18 that in this case or any other case. And so, you know, I  
19 think that that's sufficient. And, certainly, we negotiated  
20 the protective order for, like, three months in this case to  
21 protect anything that would be of legitimate concern to the  
22 defendants.

23 MR. FROST: Well, here's my -- I'm sorry. If I  
24 may, here's my concern. As I understood it -- and I think  
25 it's telling that the IPPs are telling you they have what

1 you need. They do this all the time. This is their -- this  
2 is their work. But as I understood it, the concern was 2005  
3 to 2014. There shouldn't be an issue with respect to 2015  
4 to 2022. We've already given them all those reports. So if  
5 the issue is 2005 to 2014, it does cause me concern if  
6 they're saying they want two of the most recent years. That  
7 troubling.

8 THE COURT: Yeah. I noticed that as well. What  
9 are -- what three-month period were you proposing to share?

10 MR. FROST: Something like -- to the extent that  
11 we have it, and I think that we should, something like a  
12 two-month period or give them a six-month period from Q3  
13 2013 through Q1 2014.

14 THE COURT: Uh-huh. It does make more sense to  
15 provide the information from the period for which price  
16 component reports are missing, even though I acknowledge  
17 that the DPPs are taking the position that they need more  
18 detailed information that can only be found in the general  
19 ledger, because the price component reports don't  
20 sufficiently break out the different cost components like  
21 overhead. So let's --

22 MR. FROST: Okay. I don't agree, but I hear that.

23 THE COURT: Okay. Let's start with the sharing of  
24 the six-month sample. I will hear from you after that's  
25 been provided. I think you said you would provide it -- how

1 quickly can you provide the six-month sample, Mr. Frost?

2 MR. FROST: I have to talk to the client before I  
3 fully commit, but I'm working on trying to get it to them by  
4 -- well, Wednesday is tomorrow . So I would try to do it --  
5 I could do it as best I could -- if I can, I'll do it by  
6 Friday.

7 THE COURT: All right. And then you're going to  
8 evaluate -- and I think it should be produced to both IPPs  
9 and DPPs.

10 MR. FROST: Agreed.

11 THE COURT: And then you should all talk about it,  
12 and I'll get another status report from you all. I want  
13 another status report, though, by -- let's see. Well, can I  
14 get another status report by the 11th? So that'll be a week  
15 after your call.

16 MR. FROST: Sure.

17 MR. BORDEN: Two suggestions.

18 THE COURT: Yes.

19 MR. BORDEN: One is I'm not sure if this involve  
20 getting Mr. Roth on the phone as defendants offered because  
21 that may be useful to this process. I don't know if it will  
22 be or not.

23 THE COURT: He gets deposed on Monday.

24 MR. BORDEN: He gets deposed on Monday, which is  
25 why we're trying to get this front-loaded.

1 THE COURT: Well, why don't we do this? How about  
2 this? You produce the six-month period for the general  
3 ledger. You get to examine -- plaintiffs get to examine Mr.  
4 Roth about it during his deposition on Monday. And then  
5 you'll have a record that you can present to me about why it  
6 is or is not something that you need for the period of time  
7 that is not covered by the price component reports or for  
8 the entire period of time. You'll have the basis to do  
9 that. And we can just kind of short circuit this.

10 MR. BORDEN: So can I make one more suggestion --

11 THE COURT: Sure.

12 MR. BORDEN: -- or request? Which is that if it's  
13 going to be a six-month period of data, let's do three  
14 months in 2020 and three months in the before period,  
15 because part of it is we want to, you know, see if it has  
16 the information in --

17 THE COURT: You want to compare.

18 MR. BORDEN: Yeah.

19 THE COURT: Okay.

20 MR. BORDEN: We want to compare, and we want to --  
21 we want to be able to look at the price component reports  
22 and be able to say, here's what we glean from the general  
23 ledger. Here's what's not in the price component reports.

24 THE COURT: So let's do this. Why don't we pick  
25 -- that's a useful suggestion, I think. Why don't we pick a

1 three-month period that overlaps with a price component  
2 report production that's already been made? I'm not going  
3 to dictate what period it is. But three-month overlap with  
4 the price component reports, and then a three-month --  
5 another three-month chunk that doesn't overlap with the  
6 price component reports from an earlier period, so that we  
7 can see what the older documents have available. And then  
8 you can compare, and then you can show me, hopefully, why --  
9 if you believe -- the plaintiff believes that the general  
10 ledger information is superior and essential, that you need  
11 to have it. And I can hear from the defendants whatever  
12 their contrary view is, if that's their view. And IPPs can  
13 weigh in as a voice of reason as they usually do, if they  
14 wish. So how does that sound to everyone?

15 MR. FROST: We're fine with that, your Honor.

16 MR. BORDEN: Thank you, your Honor. That's a good  
17 idea.

18 THE COURT: Okay. And I don't mean to dictate  
19 IPPs' position. That was a joke.

20 Okay. So I think that's where we stand. And if the  
21 deposition are on Monday and I ask for the status report on  
22 the Celestron margin data by August 11th, that will be  
23 sufficient for everyone in terms of timing? Yes. Okay.

24 MR. FROST: We'll have to work quickly on the  
25 report, because that actually gives us less than five days,



1 but we'll figure out how to make it work.

2 THE COURT: Right. I mean, I want something  
3 useful. So if you need more time, take more time. That's  
4 fine. Just let me know that you need until whenever, but I  
5 want something useful, okay? It's not going to help me if  
6 it's not useful. So if you don't have the transcript yet,  
7 for example, and you need time to get that, I can look at a  
8 rough. That's fine. I don't care if it's perfect. But,  
9 you know, if I do need to look at a transcript, make sure  
10 you have that and can submit it, okay?

11 MR. FROST: Thank you, your Honor.

12 THE COURT: Okay. All right. Now, we're going to  
13 move on to the Cannon deposition.

14 All right. So let me tell you how I prepared for this  
15 one. I read the papers, of course. I looked at the  
16 transcript of Judge Davila's hearing in the Orion litigation  
17 in matter 16-6370. I looked at the excerpts of the Cannon  
18 deposition transcript in this case, and I do have some  
19 questions.

20 So in Judge Davila's Orion vs. Ningbo Sunny case  
21 16-6370, I understand that the plaintiff, Orion, represented  
22 by counsel for DPPs here, they were permitted to depose Mr.  
23 Cannon for four hours to investigate the question of whether  
24 Celestron was buying telescopes directly or indirectly from  
25 Ningbo Sunny after the date of the judgment. So did that

1 deposition take place?

2 MR. BORDEN: Yes, your Honor.

3 MR. FROST: It did.

4 THE COURT: And it was for four hours.

5 MR. FROST: It was.

6 THE COURT: Okay. So in Mr. Cannon's June 21st,  
7 2023, deposition in this case, my understanding from the  
8 papers is that there were two questions essentially that the  
9 witness was instructed not to answer. The first was a  
10 question asking him if his prior testimony, which involved a  
11 series of questions and answers from his deposition in the  
12 Orion, Ningbo Sunny case about a conversation the witness  
13 had with Corey Lee about sourcing telescopes following  
14 judgment in that case, whether that testimony was truthful.  
15 And the question was essentially asked twice. And the  
16 witness was instructed not to answer twice. That's at the  
17 Cannon deposition transcript, pages 221 to 223.

18 The second question was counsel for DPPs asked the  
19 witness whether once there was a judgment in the case, the  
20 case presumably meaning the Orion litigation, the witness  
21 was told to go to China, find a new source of telescopes by  
22 Corey Lee and that Celestron decided that it was going to  
23 continue buying telescopes from Ningbo Sunny. It was just  
24 going to do it via ViewWay as an intermediary. And that's  
25 the Cannon deposition transcript, at 275, lines 12 to 17.

1 So Celestron's counsel objected to the question as --  
2 questions as improper. And I understand that the argument  
3 that the defendants are making and did make in the  
4 deposition was that DPPs' counsel had asked those questions  
5 or had asked those two questions for which instruction was  
6 given on behalf of a different client in the Orion matter  
7 pursuant to a court order permitting a four-hour deposition  
8 on that subject, and it was not appropriate to ask those  
9 same questions in this case or to ask questions about those  
10 matters in this case.

11 So the parties frame the issue differently. I  
12 understand DPPs to say it's never proper to instruct a  
13 witness not to answer on grounds of relevance. And  
14 defendants say, citing Rule 30(c)(2), that the instruction  
15 not to answer was because defendants believed the DPPs were  
16 attempting an end run around Judge Davila's order in the  
17 Orion litigation that limited deposition testimony of this  
18 witness on those topics to four hours in that case.

19 Defendants also invoke Rule 30(d)(3), which permits an  
20 instruction not to answer so that a party can apply for a  
21 protective order or some other relief and can terminate the  
22 deposition for that purpose. But I don't understand  
23 defendants to have done that in this case. I understand the  
24 state of play is the objection was made, the instruction was  
25 given, and the DPPs moved. So I'm not sure how Rule

1 30(d)(3) comes into play here.

2 So that's how I understand the parties' arguments to  
3 sort of shake out. And I would like to hear from you both.  
4 So let me start with DPPs.

5 MR. BORDEN: Sure. Thank you, your Honor. So  
6 this is a different client. This is a different case. And  
7 the issue of where defendants are sourcing telescopes, what  
8 they understand the source of telescopes to be, what types  
9 of agreements they've made with other defendants in this  
10 case, namely Ningbo Sunny, are all relevant to an antitrust  
11 conspiracy that's alleged in this case. And so we're  
12 allowed to ask questions about that in this case.

13 THE COURT: And didn't you ask those in the  
14 deposition? I read a lot of deposition transcript on that  
15 subject.

16 MR. BORDEN: Well, they didn't answer specific  
17 questions, and what Mr. Frost said on -- I don't know if  
18 this is in the transcript. He said, "We will have -- we  
19 will agree that your record is perfected without having to  
20 ask each and every one of those questions." I didn't want  
21 to sit there and try to bludgeon the witness with a bunch of  
22 questions on similar topics. I tried to ask them in several  
23 ways, like, "Will you just agree to let this gentleman  
24 answer the questions so that we can finish the deposition?  
25 And we don't have to be here." But there were a lot of

1 questions that we were trying to ask Mr. Cannon about these  
2 topics, and the topics are plainly relevant to the case.

3 THE COURT: Okay. Let me hear from the defendant.

4 MR. FROST: Yes, your Honor. So we tried to be  
5 very judicious about the questions that we instructed him  
6 not to answer. Anything that had to do with where we were  
7 sourcing product and who we were getting it from, we allowed  
8 him to answer the question. And that's clear in the  
9 transcript. Our objections were very narrow. Most of the  
10 time, literally, all we said is the objection and the basis  
11 for it. And then the only time I even spoke is to help Mr.  
12 Borden understand the line that we were drawing. And the  
13 line that we were drawing was where it was clearly only  
14 indicated to try to get some more information concerning  
15 whether or not we were still purchasing from Ningbo Sunny so  
16 they could use that for a further request for a TRO in the  
17 Orion case. We shut it down. The -- one of the two  
18 questions that you talked about was he -- Mr. Borden  
19 actually literally read -- without showing the witness the  
20 transcript, literally read pages from the other deposition  
21 and said, "Is all that correct?" How is that productive to  
22 anything, let alone miraculously compound?

23 So all we were trying to do is, literally, where it  
24 clearly had no purpose but to walk into the same areas that  
25 Judge Davila had limited the time, those are the very few

1 questions that we said no. That was it.

2 Now, there were 40-something minutes left in the  
3 deposition when they terminated it, and now they're coming  
4 to you asking for two hours. We think we understand what's  
5 really happening here. We think they're still trying to use  
6 this for the Orion case. We don't think that's appropriate.  
7 They did the same thing in the four hours they had with Amir  
8 Cannon in the other depo is they tried to use it, without  
9 the IPPs present, to start asking questions about this  
10 litigation. And I -- you know, when I would ask the court  
11 reporter to read a question back, Mr. Borden would object  
12 and say that's inappropriate. I don't get the reporter -- I  
13 don't have the right to ask the reporter to simply read a  
14 question back. We tried to have a productive conversation.  
15 It wasn't going anywhere.

16 So we let them ask everything they could possibly need  
17 on the subject of who we're buying from and where and how,  
18 with respect to this litigation. But where it was clearly,  
19 transparently even referring to the Orion case, we said no.  
20 That was all.

21 THE COURT: Okay. Let me just ask -- I was  
22 looking through the transcript -- because I thought there  
23 was some colloquy between the parties during the deposition,  
24 that, Mr. Borden, you were going to ask the questions that  
25 you wanted to ask and elicit an objection if there was one,

1 so that you would have a clear record of what the  
2 instruction not to answer was about. Now, you're telling me  
3 that you didn't do that.

4 MR. BORDEN: We did some of that. I mean, I tried  
5 to circle back with him a couple of times to get the answers  
6 and -- the point is that the intent of Celestron in making a  
7 deal with its co-conspirator is important. And if they're  
8 still sourcing telescopes from Ningbo Sunny, that's  
9 important to this case. And Mr. Frost just said he wouldn't  
10 let him answer questions on that topic. Judge Davila hasn't  
11 precluded us from asking any questions in this case. And  
12 those are relevant to the antitrust conspiracy that's a  
13 broad conspiracy that we think is ongoing in this case.

14 MR. FROST: If I may, your Honor --

15 THE COURT: Just a moment.

16 MR. FROST: Of course.

17 THE COURT: Let me just ask, do DPPs have any  
18 further questions to ask Mr. Cannon besides the questions  
19 that he was instructed not to answer? So I'm told that you  
20 have 40 minutes left in your deposition.

21 MR. BORDEN: I think that, you know, topically, we  
22 have a lot of questions on topics, you know, around that.  
23 And, you know, who knows what kind of follow up questions we  
24 would have. But the deposition was substantially interfered  
25 with and -- including what Mr. Frost is just describing, you

1 know, when there's a question pending to a witness, like  
2 asking to have the question read back when the witness is  
3 capable of answering the question.

4 THE COURT: I saw one example of that where Mr.  
5 Frost was asking to have a question read back because he  
6 didn't hear it clearly and wanted to understand it. So I  
7 saw -- if that -- if you're suggesting that I should take  
8 that one example as evidence of, you know, interference with  
9 the deposition generally, I don't have a record for that.  
10 I'm just going to put it out there. That's just one  
11 question to -- asking to read back.

12 MR. BORDEN: We could make a record of that if you  
13 want, but I don't think that's what you want. I think --

14 THE COURT: I don't think that's what your -- the  
15 point is. I'm trying to understand, are there other subject  
16 matters that you would use your 40 minutes for besides the  
17 questions that you -- that there was an instruction not to  
18 answer given or stuff directly related to those questions?

19 MR. BORDEN: It's on that topic and --

20 THE COURT: Okay. So there's no -- otherwise  
21 you're done with Mr. Cannon's deposition?

22 MR. BORDEN: I mean, it depends what -- I mean,  
23 again, like, it depends what he says. We'll be done with  
24 the deposition if we can go back and finish on this topic  
25 and exhaust all the questions that we want to ask the



1 witness. I do think, to your point, in the Orion case, you  
2 issued a very helpful order about conduct during  
3 depositions. And since this is really the first deposition  
4 of the defendants' witness in this case, it seems like this  
5 could be an appropriate opportunity to issue another order  
6 that says defendants' lawyers are not to, you know, make  
7 objections that are speaking objections and to limit their  
8 conduct to objections that are allowed under the Rules of  
9 Civil Procedure. I think that would be particularly helpful  
10 and sort of grease the skids for the rest of these  
11 depositions that we have.

12 THE COURT: You know, I don't need to issue such  
13 an order because that's the law already that you can't make  
14 speaking objections. Everybody knows that, so --

15 All right. Putting that issue to the side, I  
16 understand that there are no other categories of subject  
17 matter that were left not questioned about in Mr. Cannon's  
18 deposition. Is that fair?

19 MR. BORDEN: That's fair, your Honor.

20 THE COURT: Okay. All right. Mr. Frost, you  
21 wanted to respond to something. I'm not sure what it was.

22 MR. FROST: I actually think you've covered the  
23 topic that we -- I don't want to belabor the point, but  
24 since we are on the record, nobody did anything  
25 inappropriate in terms of the objections. I think the

1 record is clear on that.

2 But with respect to the issue of the subject matter --  
3 oh, I do remember the point I was going to make. They have,  
4 and I think it's clear in the transcript -- clearly had an  
5 opportunity to ask the question and get answers as to  
6 whether they're still buying from Ningbo Sunny. I mean  
7 that's answered 100 different ways in the transcript. That  
8 was not the point of the objection, not the point of the  
9 instruction. It was very limited to questions that  
10 specifically hearken back to the actual Orion litigation and  
11 what they're trying to accomplish there. And if this depo  
12 is allowed to go forward on that topic, I'll bet you five  
13 dollars, a month from now, we're going to have a motion in  
14 the Orion case citing back to this transcript talking about  
15 Ningbo Sunny. That's where we're heading.

16 THE COURT: Well, okay. I'm not sure what to make  
17 of that, because if it really is true that your client is  
18 surreptitiously buying stuff through an intermediary, then  
19 okay. But I do agree that the question has already been  
20 asked and answered.

21 And let me just tell you my take on this. I'm going to  
22 -- this is how I'm going to decide this issue so we can move  
23 on to the depo scheduling. So I agree that an instruction  
24 not to answer solely because a question concerns subject  
25 matter that is not relevant is improper under the rules.

1 But I don't think that the -- that is actually a fair  
2 characterization of what happened in this deposition, at  
3 least not by the time we got to the end of it. I  
4 understand, rather, that the defendants' instruction not to  
5 answer was for the purpose of enforcing what they believed  
6 was a limitation that Judge Davila had set by court order in  
7 the Orion litigation.

8       So it's not per se improper in the manner that DPPs  
9 argue in their motion. I don't think I need to resolve  
10 whether in fact it was or was not a violation of Judge  
11 Davila's order regarding Mr. Cannon's deposition in the  
12 Orion litigation, because the deposition of Mr. Cannon in  
13 this case was, of course, appropriate to take.

14       And in terms of the questions that he was asked that he  
15 did not answer, I'm not inclined to order a witness to sit  
16 for further deposition to be asked whether testimony he gave  
17 in a prior case was or was not truthful. There's just no  
18 point for that. That's not a proper use of a deposition in  
19 this case.

20       But, more importantly, Mr. Cannon has already testified  
21 at some length about the matters that DPPs say they are most  
22 interested in learning about. And that is specifically the  
23 subject of Celestron's efforts to identify substitute  
24 manufacturers for Ningbo Sunny and its interactions --  
25 Celestron's interactions with ViewWay.

1 And also, the question of whether they're still using  
2 Ningbo Sunny, in that deposition testimony, at least the  
3 part that's presented to me is at Cannon deposition  
4 transcript 215, 19 to 24, 216, seven to 12, 217, 20 to 218,  
5 17, and the extended discussion at 272, five to 275, eight.  
6 And there may be more discussion in there that wasn't  
7 presented to me. But I think you've had your opportunity to  
8 ask this witness the questions about what Celestron is doing  
9 to procure telescopes in lieu of its ability to obtain  
10 telescopes from Ningbo Sunny and its interactions with  
11 ViewWay. The witness has answered those questions. And I  
12 just don't see any basis for having to come back to answer  
13 more questions asked in a different way about whether he was  
14 or was not lying in his prior deposition. It's just a waste  
15 of time.

16 So the answer is no. DPPs' request for further  
17 deposition time with Mr. Cannon is denied. And, obviously,  
18 the request for an opportunity to seek sanctions for  
19 improper instructions not to answer is also denied. All  
20 right.

21 MR. BORDEN: So, your Honor, can I --

22 THE COURT: Yes, I will put that in writing if you  
23 need it, but that's my conclusion.

24 MR. BORDEN: Can I make one response to that,  
25 which is that the deposition was taken of Mr. Cannon like a

1 year ago, maybe more than a year ago. We're still entitled  
2 to understand what they're doing now on the same topic.

3 THE COURT: Of course. And that's why you asked  
4 those questions and got those answers at page 272, line five  
5 to 275, line eight. You've already asked the questions and  
6 gotten the answers. I don't know what else to tell you. If  
7 you hadn't gotten the answers and hadn't asked the  
8 questions, well then maybe he could come back for 40 minutes  
9 to have you do that, but that's not what the record shows  
10 me. And that's not the basis for your motion, so -- and I'm  
11 certainly not going to have him come back and answer  
12 questions about whether his prior testimony was or was not a  
13 lie.

14 MR. BORDEN: Well, the purpose of --

15 THE COURT: So it's just not -- I've made my  
16 ruling, okay?

17 MR. BORDEN: Okay.

18 THE COURT: So we're done. We're going to move on  
19 to depo scheduling.

20 All right. Let me look at -- the party status report  
21 that was filed yesterday indicates that there are a number  
22 of depositions that are -- well, that are the subject of  
23 this conference today. Let me just understand, are there  
24 any objections to the taking of the depositions on the  
25 merits of any particular witness? Or is the problem just

1 scheduling?

2 MR. FROST: Simply scheduling.

3 THE COURT: Is that the plaintiffs' view as well?  
4 There's not an objection to a particular witness?

5 MR. DALLAL: I think that's right, your Honor,  
6 although there is the question of seven versus 11 hours for  
7 some of them.

8 THE COURT: Okay. Okay. Got that. But apart  
9 from the length of time, it's not whether the witness should  
10 or should not be deposed. Okay.

11 MR. FROST: I'm going to give a -- I'm going to  
12 state a caveat to that as well, which maybe the DPPs can  
13 answer. There is one witness who is a potential new class  
14 -- potential new putative class representative who is part  
15 of their motion to amend that we had asked to go ahead and  
16 depose because we're concerned that she may be overlapping  
17 with the issue of Radio City and Maline Fish, who is her  
18 mother, and that they had said -- DPP said they would make  
19 her available, but then they have objected in the papers  
20 that they don't have to make her available because she's not  
21 a putative class rep.

22 THE COURT: Is this Ms. Wollens (phonetic)?

23 MR. FROST: There you go.

24 THE COURT: Okay. But this is -- this deposition  
25 -- Ms. Wollens' deposition is on the list. And if there's

1 no objection on the merits to her being deposed, I don't  
2 understand that to be an issue.

3 MR. FROST: Okay. Then great. Because they had  
4 just put that in the papers that they didn't think we would  
5 have the right, and so I didn't understand.

6 THE COURT: Well, they said, "We don't have to.  
7 She's a non-party," but we're going to make her available  
8 anyway. That's what I understood them to say. Is that not  
9 correct?

10 MR. BORDEN: That's correct, your Honor.

11 MR. FROST: Okay. Very good.

12 THE COURT: Okay. Fine. So let's not make more  
13 hassle where there's not hassle. Okay.

14 So why have the parties been unable to schedule these  
15 depositions?

16 MR. FROST: If I may, your Honor?

17 THE COURT: Sure. Go ahead.

18 MR. FROST: We had -- scheduling these depositions  
19 has been a remarkable effort. In order to get this done  
20 with the coordination that we need to, we had proposed dates  
21 for almost all the witnesses, and then there were a couple  
22 of stragglers. After we did that and after we had said --  
23 we said we need to know who you want to depose, give us your  
24 full list. And they did. It did not include 30(b)(6)s.  
25 And we said we need to understand everybody, because

1 coordinating these is going to be virtually impossible.

2 They said, "Fine."

3       After they gave us the list and after we had worked  
4 through most of them and had set dates for most of them,  
5 they said -- came back and said, oh wait, these are the ones  
6 that we want 11 hours for and went back and said -- for  
7 almost every witness. So we had to start over. And then  
8 for -- you have to understand, for the 11-hour witnesses,  
9 many of them are native Mandarin --native Mandarin or native  
10 Cantonese, which means that we double the time because of  
11 the translator. And now we're talking three days for each  
12 of them.

13       And so when we finally got in a place where we  
14 understood -- and all this happened very recently, within  
15 the past couple of weeks. So when we finally got in a place  
16 where we had a meet and confer, and we said, "All right. Do  
17 we have everybody on your list?" And they said, "Yes, this  
18 is the list," and it did not include 30(b)(6) witnesses. So  
19 we said, "Fine, no problem." And I said, "I will get you --  
20 I cannot get you three alternative dates for every witness  
21 that requires three days of testimony." I cannot physically  
22 make Taiwan work that way. And so IPP said, "Great, get us  
23 the dates that they're available," and DPP said, "No, we  
24 need three alternatives." And I said, "I can't give you  
25 three alternatives." So when we all came to a resolution



1 that we can -- and I know it's mind numbing, I apologize,  
2 but I need you to understand the process. When we finally  
3 came to a resolution and I said, "Okay. I'll get you the  
4 dates." And I got all the dates except for two witnesses  
5 and then two more that they just brought up that day.

6 And so we gave them all the dates. Everybody confirmed  
7 the dates. And then all of a sudden when we bring the issue  
8 toward you -- and I told them once I confirmed those, I can  
9 get you Joe Lupica and one other witness, the one who was  
10 remaining, and -- I can't remember the name. But -- and  
11 after we did that, we said, "Great. IPP is confirmed. DPP  
12 is confirmed." And right before we came in to you, they  
13 said, "Wait, we don't have 30(b)(6)" --

14 THE COURT: Are you talking about today or last --  
15 on the 18th?

16 MR. FROST: In the -- this time.

17 THE COURT: Okay.

18 MR. FROST: Today. Like, in preparing the status  
19 report for today --

20 THE COURT: Yeah.

21 MR. FROST: -- they brought up the issue first  
22 again of the 30(b)(6) witnesses. And if those have to be  
23 separate days -- they're going to be the same witnesses.

24 THE COURT: Okay.

25 MR. FROST: But if those have to be separate days,

1 we have to start over. I told them we have to have the full  
2 list, because this is really complicated. And that's how we  
3 ended up here.

4 THE COURT: Okay.

5 MR. FROST: We had given them dates for almost  
6 everybody.

7 THE COURT: Okay. Let me hear from the  
8 plaintiffs. Who's speaking on the deposition scheduling  
9 issue?

10 MR. FISHER: I'll speak on behalf of DPP. This is  
11 Mr. Fisher.

12 THE COURT: Okay. So -- and the question, just  
13 keep in mind, is, why have the parties been unable to  
14 schedule the witnesses listed in the reports?

15 MR. FISHER: The reason that the parties have been  
16 unable to schedule the depositions listed here, your Honor,  
17 is because defendants have refused repeatedly to comply with  
18 this Court's order and the stipulated orders regarding  
19 deposition scheduling in this case. We've been seeking to  
20 schedule these depositions for a long, long, long time.

21 THE COURT: Can I have, like, a more recent  
22 explanation? Because -- and the reason I pause you there is  
23 because when we last were here and we had this conversation  
24 about the utility of a discovery conference, you all were  
25 going to meet and confer. And then we were going to have

1 something like the agenda right before Monday so that I  
2 could prepare to assist you. So I really just need, like,  
3 what happened, not six months ago, but what -- why can't  
4 these be scheduled, given your efforts over the last, you  
5 know, week or so?

6 MR. FISHER: Understand, your Honor. Now I  
7 understand your question. The answer is that defendants --  
8 we've been asking for the dates that are listed here, and  
9 defendants weren't providing them. We were taking the  
10 deposition dates that they were willing to give us. I asked  
11 in no less than three separate e-mails before our scheduled  
12 conference for defendants to provide the dates that they  
13 were proposing so that we could say, "Yes, those are good.  
14 No, they're not," so we could have a productive  
15 conversation. Defendants did not do so. They came to the  
16 conference with a list of -- an incomplete list of dates.  
17 At the first conference --

18 THE COURT: Meaning they had two dates per witness  
19 instead of three?

20 MR. FISHER: No, your Honor. That's not what I  
21 mean. I mean, for only a handful of witnesses at the first  
22 conference, which was last Tuesday, they had dates for only  
23 two witnesses, Mr. Roth and Mr. Lee. Those are the only  
24 witnesses they had dates for.

25 THE COURT: And those witnesses have been

1 scheduled?

2 MR. FISHER: And we scheduled those.

3 THE COURT: Okay.

4 MR. FISHER: They came to the Thursday conference,  
5 and they had deposition dates for the Taiwan witnesses in  
6 their individual capacity, and they had deposition dates for  
7 essentially the folks who weren't here. And of the folks  
8 that they proposed, we accepted the dates, and they're  
9 scheduled.

10 THE COURT: Okay.

11 MR. FISHER: We told them we aren't -- do you have  
12 30(b)(6) dates for us today during that call, and they said  
13 no. There can be no surprise that we're here saying --

14 THE COURT: So let me just ask a question about  
15 the -- who are the Taiwan witnesses? You're both referring  
16 to Taiwan -- who are they?

17 MR. FISHER: They are the -- there's a number of  
18 individuals, but I believe I can give you --

19 THE COURT: Can you tell me their -- are they on  
20 this list?

21 MR. FISHER: They are not your Honor, but I can  
22 give you -- Michael Son will be a Taiwan witness, so he's  
23 the exception here.

24 THE COURT: Okay. So this is Taiwan. And that  
25 means they're being deposed in Taiwan. They have to come

1 from China to Taiwan.

2 MR. FISHER: I believe there's some questions of  
3 whether Mr. Son can be deposed in Taiwan or Hong Kong,  
4 but --

5 THE COURT: I see. Okay.

6 MR. FISHER: Over there, if you will, your Honor,  
7 there is Mr. David Shen.

8 THE COURT: David Shen. I don't see him on the  
9 status report.

10 MR. FISHER: Because he's been scheduled, your  
11 Honor.

12 THE COURT: Oh, I see. You're telling me people  
13 who have already been scheduled.

14 MR. FISHER: These are the people -- Yes. The  
15 individuals other than Mr. Son in Asia --

16 THE COURT: Got it. Okay.

17 MR. FISHER: -- those have been scheduled.

18 THE COURT: Okay. So that's David Shen.

19 MR. FISHER: David Shen and his sister-in-law,  
20 Dong Yun Xue.

21 THE COURT: Okay.

22 MR. FISHER: His brother-in-law Dar Gon Shen  
23 (phonetic).

24 THE COURT: Okay.

25 MR. BORDEN: Sylvia Shen.

1 MR. FISHER: No. Sylvia Shen is -- lives in San  
2 Francisco.

3 THE COURT: I'm sorry. Sylvia Shen?

4 MR. DALLAL: There had been six witnesses  
5 originally, your Honor. So, at this point, those three are  
6 the only ones. So it's actually David Shen, and Dar Gon  
7 Shen is David Shen's brother, and then Dong Yun Xue is David  
8 Shen's sister-in-law.

9 THE COURT: So not Sylvia Shen?

10 MR. DALLAL: And no -- Sylvia Shen and Jack Chen,  
11 C-H-E-N, had originally been among the group of six, but  
12 defendants are now presenting them on agreed dates in San  
13 Francisco.

14 THE COURT: Okay.

15 MR. DALLAL: And then there's -- the sixth one is  
16 Michael Son who had originally been proposed for Taiwan.  
17 And now we understand that there is a question as to whether  
18 he can lawfully travel to Taiwan. And so we're trying to  
19 make alternative arrangements for that, perhaps involving  
20 Hong Kong.

21 THE COURT: Oh, I see. Okay. Okay. So is the --  
22 is part of the problem that some of the witnesses who are --  
23 you've described as the Taiwan witnesses also going to be  
24 defendants' 30(b)(6) designees?

25 MR. FROST: So the issue, your Honor, is all of

1 the witnesses will be 30(b)(6). Not that -- let me take  
2 that back. All of the 30(b)(6) witnesses will be among the  
3 witnesses who have already been identified for dates.

4 THE COURT: Okay.

5 MR. FROST: And if we can do those in overlapping  
6 to where they're taking the 30(b)(6) deposition at the same  
7 time they're taking the individual, then that solves the  
8 problem. And we can identify who will --

9 THE COURT: Okay. So it's not just a -- it's not  
10 just a Taiwan witness problem. It's like an all defendant  
11 witness problem?

12 MR. FROST: Correct.

13 THE COURT: Okay. So can I just ask a question  
14 about that? Because there are a number of Rule 30(b)(6)  
15 depositions that the plaintiffs want. Have notices been  
16 served for those?

17 MR. FISHER: No, your Honor. We've been trying to  
18 schedule -- we've been told who -- at a high level who the  
19 witnesses are going to be. For example, we've been told for  
20 Pacific Telescope that that's going to be Sylvia Shen.  
21 We've been told for the Olivon Manufacturing defendants that  
22 that's going to be Jean Shen, who she's the principal of.  
23 We've been told that Mr. David Shen will be the witness for  
24 Suzhou Synta and -- excuse me, or Suzhou Synta.

25 And so there's been names that have been associated

1 with this, and we've been trying to just get the dates that  
2 make sense. And it -- actually, we negotiated a discovery  
3 order at the outset of this case in which we agreed that the  
4 30(b)(6) dates would be conjoined and adjacent, to the  
5 extent possible, to the individual dates. You know, so if  
6 there was --

7 THE COURT: Right. Now that -- and that makes  
8 complete sense.

9 MR. FISHER: We agree.

10 THE COURT: But, ordinarily, a corporate entity  
11 needs to see what the topics are in order to understand who  
12 the designees will be. So I'm a little bit puzzled by why  
13 you all are trying to do this without actually having -- and  
14 this goes for defendants too -- having exchanged your  
15 30(b)(6) notices so that you can actually figure out who the  
16 witnesses are who need to testify as to the topics.

17 MR. FISHER: Right. Well --

18 MR. FROST: If I may, your Honor.

19 THE COURT: Let me just hear from Mr. Fisher  
20 first, and I'll come back to you, Mr. Frost.

21 MR. FISHER: Well, there are certain instances in  
22 which that, in fact, has happened, your Honor. For example,  
23 your Honor ordered a special 30(b)(6) deposition regarding  
24 document destruction. And we served that notice.

25 THE COURT: Yeah.



1 MR. FISHER: That notice obviously went through a  
2 court order. You approved --

3 THE COURT: Right.

4 MR. FISHER: -- you limited it in some respects.  
5 We still have been unable to schedule that deposition as  
6 well.

7 THE COURT: Okay. But that's not answering my  
8 question. So, like -- it seems to me -- it's like you're  
9 making it harder on yourselves by not actually exchanging  
10 the notices when you're trying to negotiate the scheduling  
11 of individual depositions for people who are also going to  
12 be designees. Like, why not just -- why not do that?

13 MR. FISHER: That's a sensible suggestion, your  
14 Honor. I would say that's not something the defendants have  
15 raised with us. We would have been willing to do that.  
16 That's fine. We'll do that.

17 THE COURT: Okay. But that's like -- nobody has  
18 to raise it with anybody. This is like -- I'm sorry, but  
19 this is normal to kind of think -- and maybe you negotiated  
20 your way out of doing it this way in your stipulation, but I  
21 don't think the stipulated discovery order precludes this.  
22 And why not do it?

23 MR. FISHER: No, my point --

24 THE COURT: I mean -- because you want prepared  
25 witnesses. You want prepared witnesses. Like, why not?

1 MR. FISHER: We're completely happy to do that,  
2 your Honor.

3 THE COURT: Okay.

4 MR. FISHER: That wasn't the point that I was  
5 making. The point I was making is that as we were in these  
6 discussions with defendants, you know, the lack of topics  
7 has not been an impediment to scheduling these. So it's not  
8 something that have been articulated to us.

9 THE COURT: Okay. Well, if it hasn't been an  
10 impediment, fine. But Mr. Frost seems to think it's a  
11 problem.

12 MR. FROST: I wholeheartedly disagree. We have  
13 put it in writing numerous times for your 30(b)(6)  
14 witnesses, we need to know what the topics are. I did not  
15 give those witnesses those designations. We've told them  
16 that, and we haven't seen it, and that's the problem.

17 THE COURT: Okay. But, Mr. Frost, is there really  
18 any question for a given defendant who the designees will  
19 be?

20 MR. FROST: Yes. Yes.

21 THE COURT: Okay.

22 MR. FROST: For some of them, it's easy. For  
23 Olivon, it will be Jean Shen. For --

24 THE COURT: Okay. So for whom is it not easy?

25 MR. FROST: Synta Taiwan. Potentially Suzhou

1 Synta. Potentially Nantong Schmidt. Potentially Celestron,  
2 because it may be multiple witnesses.

3 THE COURT: Okay.

4 MR. FROST: Now, if we can get the notices and we  
5 can see what the topics are, we can designate them. But the  
6 problem we're having now is -- and maybe this is something  
7 we can get clarity from the Court -- and just so we're  
8 clear, for the one 30(b)(6) that we noticed, they have the  
9 topics. We gave them the topics. They had the notice,  
10 so --

11 THE COURT: For your 30(b)(6) depo of Radio City?

12 MR. FROST: Radio City, correct. And that's the  
13 one we terminated after we figured out the other problems in  
14 the documents that we're going to pick up again. So the  
15 problem that we're having is we're coming up on Paul Roth  
16 and Corey Lee's depositions next week and the following week, and  
17 they may be two of Celestron's 30(b)(6) witnesses, but I  
18 don't know the topic, so I can't know it.

19 Now, if the -- what I would suggest is, if the Court  
20 says that the days that we have for these witnesses will  
21 include the 30(b)(6) depo dates and they would just run  
22 concurrently, that solves the problem, because once we get  
23 the topics --

24 THE COURT: What do you mean "run concurrently"?

25 MR. FROST: So --

1 THE COURT: Meaning that you're taking the  
2 individual deposition on the same day or --

3 MR. FROST: Correct. That they are -- they will  
4 be testifying in their individual and their 30(b)(6)  
5 capacity.

6 THE COURT: Okay. How does that work with the  
7 timing, though? Because if a witness is testifying in  
8 Chinese or Mandarin, let's say, and is going to be on the --  
9 you know, for his or her individual deposition subject to 22  
10 hours or 14 hours of deposition -- I mean, we're talking  
11 about days if they're also going to be a 30(b)(6) designee,  
12 right?

13 MR. FROST: And that's -- but that's what I'm  
14 saying is if we had known this issue earlier -- if we have  
15 to do more days, the whole schedule goes out the window  
16 because Taiwan is now full, San Francisco is now full, and  
17 we are running out of days.

18 THE COURT: When you say those locations are full,  
19 what does that mean?

20 MR. FROST: It means that we have almost  
21 back-to-back days every day for the entire period that we're  
22 in Taiwan, which, as everybody agreed, two weeks. And then  
23 we have almost four weeks in San Francisco, the entire month  
24 of October, to cover those depositions. So if we have to  
25 start adding days to these multiple witnesses, we have to

1 start over on the scheduling.

2 THE COURT: I don't know why we would have to  
3 start over.

4 MR. FROST: Because they're back-to-back. And so  
5 when David Shen is done, the next witness starts. There are  
6 no more days in there to make that work.

7 THE COURT: Okay. But is there a defined -- do --  
8 have you set aside defined days for each witness? Or is it  
9 just, once we get done with witness A, we start up with  
10 witness B, and they're just in the queue.

11 MR. FROST: We have defined -- we have defined  
12 days.

13 MR. FISHER: The parties have agreed to define  
14 days, your Honor, but there's days built into there that  
15 could easily be used for the 30(b)(6) depositions. For  
16 example, Mr. Shen's deposition is scheduled on three days,  
17 but they're not consecutive. There's gap days between each  
18 day of testimony. And it would be very easy to rejigger  
19 those days so that that period is taken by 30(b)(6)  
20 testimony. In other words, your Honor --

21 THE COURT: His 30(b)(6) testimony, or some --

22 MR. FISHER: If I may just give an example.

23 THE COURT: Yeah.

24 MR. FISHER: These aren't the exact dates, but  
25 it's as if it's like this, Mr. Shen testifies on a Monday

1 and a Wednesday and a Friday. That's the way it's currently  
2 scheduled at defendants' request. It would be no problem to  
3 make Mr. Shen's testimony Monday, Tuesday, Wednesday, and  
4 have the 30(b)(6) one on Thursday and Friday, for example.  
5 We think it's quite workable.

6 THE COURT: Okay. So then the witness is  
7 potentially in deposition for five straight days.

8 MR. FISHER: Your Honor, that is not what I would  
9 choose to do with my witnesses and my client, but we're  
10 being told that it's very important to defendants that these  
11 are all done at the same time. We personally are taking  
12 these remotely. So we're fine doing the Taiwan depositions  
13 separating the 30(b)(6) from the individuals, but --

14 THE COURT: Okay. So the witness will be in  
15 Taiwan, and the lawyers will be where?

16 MR. FISHER: DPP lawyers will be in San Francisco,  
17 your Honor.

18 THE COURT: Okay. And where will defense lawyers  
19 be?

20 MR. FROST: Defendants and, I understand, IPPs  
21 will be in Taiwan.

22 THE COURT: Okay.

23 MR. FISHER: That's correct.

24 THE COURT: All right. So, I mean, it doesn't  
25 make sense to have an individual witness, who's also a

1 designee, appear multiple times, but I'm also a little bit  
2 wondering about whether if you have a witness testifying  
3 both in his or her individual capacity and as a designee,  
4 whether you really need the full, you know, individual time  
5 and the full 30(b)(6) time. I mean -- and maybe at this  
6 point you have some sense of how this will go, but just  
7 because you can doesn't mean you have to. And I'm just  
8 wondering if you -- if there can be some flexibility in the  
9 schedule where you can be more efficient than you -- yeah.  
10 Okay. Go ahead.

11 MR. FISHER: So I can just speak to experience on  
12 this because we went through this in the Orion case.

13 THE COURT: It takes a long time when you have to  
14 have translation. I get it.

15 MR. FISHER: It's less than half time because of  
16 -- you know, you ask a question, you get an answer that's a  
17 non-sequitur. Then you got to figure out if the witness  
18 understood or if -- anyway, it's very slow going. And so I  
19 would be -- I would be reticent to sacrifice any time,  
20 especially on the 30(b)(6) aspect of things, because that's  
21 how you bind the company.

22 THE COURT: Right. Okay. So, Mr. Frost, what do  
23 you think about the idea of -- or the suggestion that there  
24 is some room in the schedule and that there is room to  
25 actually -- you don't have to start over. You can actually

1 update the schedule to include 30(b)(6) testimony in there.

2 MR. FROST: Because it doesn't work for two  
3 reasons. Number one, because it does not give me time to  
4 prepare my witnesses in advance of their depositions, and  
5 all three of these witnesses are elderly, which is going to  
6 make it incredibly hard on them to sit for  
7 back-to-back-to-back days of a deposition. It would be --

8 THE COURT: When are you doing the Taiwan  
9 depositions?

10 MR. FROST: September 11 through 25.

11 THE COURT: And when are you doing the San  
12 Francisco depositions?

13 MR. FROST: October, I believe, 2nd through the  
14 23rd or 24th.

15 THE COURT: So why don't you have -- if you got --  
16 if you got the notices for deposition, you know, by the end  
17 of this week, why would that not give you enough time?

18 MR. FROST: To do what?

19 THE COURT: To prepare your witnesses?

20 MR. FROST: We will be preparing our witnesses,  
21 but I -- we will be preparing our witnesses in advance, but  
22 there are a lot of witnesses to prepare. And I -- and -- we  
23 know how this works. I need to be able to meet with my  
24 witness at least the day before the depo. And I can't -- it  
25 does not solve the issue that they are elderly and they are



1 frail, and I am afraid to put them up for multiple  
2 back-to-back days, a five straight day depo.

3 THE COURT: Oh, I see. So you can't -- so you're  
4 saying the witness just can't sit in a deposition for  
5 consecutive days. They need a rest day?

6 MR. FROST: Correct. Correct.

7 THE COURT: All right. Because the prep thing,  
8 I'm not too sympathetic about, because if you have the  
9 notice more than a month in -- before the deposition starts  
10 -- if you have to go out to Taiwan earlier, okay, or some of  
11 your team -- you know, or you do it by video or whatever it  
12 is. You have an opportunity to prep. I realize it's  
13 difficult, but it seems like that's doable. Yes.

14 MR. DALLAL: Your Honor.

15 THE COURT: Yes. Go ahead, Mr. Dallal.

16 MR. DALLAL: So I believe the only witness in  
17 Taiwan that is potentially at issue for 30(b)(6) testimony  
18 is David Shen. The two others Dar Gon Shen and Dong Yun  
19 Xue, I believe Mr. Frost said that they weren't going to  
20 know anything. I think that was how he characterized it on  
21 the meet and confer call. So we hope that somebody that  
22 doesn't know anything wouldn't be put up as a 30(b)(6). I  
23 mean, they are valid 30(b)(1) deponents. They are witnesses  
24 to some of what went down in this case. But I think David  
25 Shen is the only one that would be a 30(b)(6) witness.

1 And so our concern is that, you know, we've been trying  
2 for, I think, around a year to schedule these depositions.  
3 We've been told, you know, many things were reasons to throw  
4 the whole schedule "out the window." When we asked for --  
5 when we discovered there was a limited number of  
6 knowledgeable individuals, we wanted to depose those people  
7 for 11 hours rather than seven, as is our right under the  
8 discovery plan, if that upended all of the dates that we had  
9 been contemplating prior to that.

10 Now, we're told that -- you know, needing to add  
11 30(b)(6) testimony is going to, you know, throw it out  
12 again. We just don't think the notion that wholesale  
13 destruction of, you know, laboriously negotiated dates is  
14 the right way, and especially given that David Shen is very  
15 likely the only 30(b)(6) witness in Taiwan. We think that  
16 we can hold the dates we have now and just add a date on the  
17 front or the back of his testimony and find a way to get the  
18 30(b)(6) done. But we really don't want to see the whole  
19 schedule get upended.

20 THE COURT: Yeah. It doesn't make sense. So  
21 what --

22 MR. FROST: If I can make --

23 THE COURT: -- is David Shen elderly?

24 MR. FROST: He is.

25 THE COURT: And is he the only 30(b)(6) witness in

1 Taiwan, or are there others?

2 MR. FROST: He is. And it -- what would it --  
3 what it would be helpful for me to understand is, what is  
4 the expectation with respect to the 30(b)(6) witnesses in  
5 terms of how long they need? Are they going to want two  
6 full days for a 30(b)(6) because it requires a translator.  
7 Because if we do, we're talking five days. And I literally  
8 cannot ask him to sit for five straight days. He will not  
9 be able to handle it.

10 THE COURT: So is there a room in the schedule for  
11 him to -- if he's already testifying on Monday, Wednesday,  
12 and Friday, for him to then come back the next week for two  
13 days?

14 MR. FROST: I can see how we can adjust the  
15 schedule to make that work, but --

16 THE COURT: Yeah. I mean, if he's the only  
17 30(b)(6) witness in Taiwan, doesn't that help you? Because  
18 that's the only person that you would need to accommodate in  
19 Taiwan.

20 MR. FROST: So let me ask a question is, can we  
21 agree that for a witness who is a 30(b)(6) witness and a  
22 Chinese speaker, that we add one additional day. That's  
23 four full days. And then if we need to discuss the issue,  
24 we can, but that's a lot of time. And we -- I could make an  
25 additional day work.

1 THE COURT: well, yeah. So here's the thing about  
2 this. It -- I mean, you all are experienced in doing this  
3 with the need for translation, and it can make it take a  
4 really long time. I appreciate that. I know that there was  
5 a reservation, I think it was by DPPs, that the time limits  
6 that were in here were subject to proportionality objections  
7 if there were any.

8 Now, I don't -- it's hard for me to decide whether  
9 there's any proportionality objection to request for a  
10 two-day 30(b)(6) deposition after a witness has sat for an  
11 individual deposition for three days, because I don't have a  
12 notice. So what I'm going to ask you all to do is, to the  
13 extent you have not exchanged 30(b)(6) deposition notices,  
14 you should do that immediately, and you should prioritize  
15 the ones for witnesses in Taiwan or who the designees are  
16 likely to be people in Taiwan.

17 So how quickly can the -- I think defendants have  
18 already served their notice. So how quickly can the DPPs  
19 and IPPs provide their deposition notices for 30(b)(6)?

20 MR. FISHER: I believe we could have that out  
21 tomorrow, but I'll -- I won't speak for IPPs.

22 MR. DALLAL: I think we're close. We do need to  
23 consult with our experts who have certain obligations on  
24 other matters. So I would say by the end of the week or  
25 ideally -- well, what's today? Today is the 1st. Maybe by

1 Monday, the 7th.

2 THE COURT: Okay. I mean, I think you should do  
3 it as soon as you can and prioritize the ones for Taiwan for  
4 planning purposes. But I also think that you should really  
5 -- you should really keep in mind how much time do you  
6 really need, right? I mean, if we limit it to four days as  
7 you suggest, Mr. Frost, if there's something -- if I get a  
8 transcript that says, you know, the plaintiffs have very  
9 efficiently asked questions and it just took as long as it  
10 took, but there are still important topics to be examined  
11 that were not examined, you know, I'll order another day,  
12 and then you have to go back to Taiwan. I mean, nobody  
13 wants to do that, right?

14 So I think it's in everyone's interest to make sure  
15 these depositions are focused, the witnesses are prepared,  
16 and that you can be as efficient as possible. I'm not  
17 inclined to make someone who's elderly endure five  
18 consecutive days of deposition, and I won't do that if I'm  
19 -- there's a representation that that person just can't  
20 tolerate that kind of a sustained interrogation. It's just  
21 not going to happen, so --

22 MR. FISHER: And we wouldn't ask the Court to do  
23 that, your Honor. This is Mr. Fisher on behalf of IPPs  
24 (sic.). But, you know, candidly, one thing that's difficult  
25 here is that we've been trying to make progress on

1 scheduling these depositions for so long. And the fact that  
2 there's a manufactured crisis now, because the IPP defendant  
3 discovery deadline is coming up, it's difficult for us to  
4 agree.

5 THE COURT: Wait, what's the manufactured crisis?

6 MR. FISHER: Oh, my understanding is that in the  
7 -- one reason why this is now highly compressed is because  
8 we haven't been able to schedule any defendant depositions  
9 except for Mr. Cannon's to date in this case and because the  
10 IPP defendants' discovery cutoff is in, I believe, early or  
11 mid-October. We do not have a discovery cutoff in the DPP  
12 case. And we would like for this to be an orderly process,  
13 but a little bit -- that's creating a crisis here. And it's  
14 the combination of the inability of defendants to produce  
15 their witnesses prior and this -- the discovery cutoff  
16 that's moving in the other case.

17 THE COURT: All right.

18 MR. FROST: With all due respect --

19 MR. BORDEN: Can I make one suggestion, your  
20 Honor, which is that if Mr. Shen is sick and --

21 THE COURT: He's not -- he's elderly.

22 MR. BORDEN: -- elderly, and it's difficult for  
23 him to sit consecutively, then -- I think your suggestion  
24 to, you know, put him up at the beginning of the -- you  
25 know, before this, put him up -- you know, at the end.

1 Like, there's no magical reason why he should have to -- I  
2 mean, he lives in -- I believe he lives in Taiwan. And so  
3 -- you know, he could come get deposed at any point along  
4 the course of those two weeks or two weeks and two days, add  
5 two days at the end, add two days at the beginning, but let  
6 us take the full deposition. That way we -- I think that  
7 will eliminate the possibility that we have to come back  
8 here if we actually have sufficient time, because I don't  
9 want to be in the position where we're having to file  
10 motions and, you know, argue about, you know, whether we  
11 were efficient in our depositions or not and whether --

12 THE COURT: Yeah, I don't want to hear anything  
13 about that either. I'm just hoping that you will be.

14 MR. BORDEN: Yeah, well, we'll try to be.

15 THE COURT: Okay. Yeah.

16 All right. Mr. Frost, what about -- we're trying to  
17 figure out ways to accommodate the witness -- your witnesses  
18 who are elderly and can't sit for consecutive days but who  
19 also need to be prepared. So I'm going to order that the  
20 notices be served by the plaintiffs at the latest by August  
21 7th, so that you have full information about what the topics  
22 are.

23 MR. FROST: The only caveat to that --

24 THE COURT: Yeah.

25 MR. FROST: And what I think we can do is, we can

1 meet and confer -- meet and confer with the IPPs and that  
2 maybe that we can extend the deadline a little bit so that  
3 we actually build in more days to create the opportunity we  
4 need, which may solve the problem in and of itself.

5 I will tell you my biggest concern is Celestron,  
6 because I've got Paul Roth next week. I've got Paul Roth  
7 starting on August 7th, and he may be a witness -- a  
8 30(b)(6) witness, depending on what the financial topics  
9 are. And I've got Corey Lee on August 14 and 15. And so if  
10 I --

11 THE COURT: Who may also be a 30(b)(6) witness.

12 MR. FROST: And I guarantee they will be witnesses  
13 on -- they will have to be 30(b)(6) witnesses. And so if I  
14 don't get that notice, and I can't know that now, then we're  
15 going to have to bring them back, and that's going to put us  
16 in the position that we -- nobody wanted to be in. But we  
17 have never seen a notice to know what to do with that.

18 THE COURT: All right. Okay. So who's taking Mr.  
19 Lee's deposition? Both of you? Both sets of plaintiffs?

20 MR. DALLAL: We're both taking Mr. Roth and Mr.  
21 Lee.

22 THE COURT: Yeah.

23 MR. DALLAL: On the other hand, these are folks  
24 that are in L.A. If -- I mean, we're talking about one  
25 30(b)(6) notice to Celestron. So -- well, we can get it out



1 expeditiously. But to the extent that one of these  
2 individuals who's not elderly and who is located in the  
3 United States has to appear twice, I mean that happens in  
4 most cases --

5 THE COURT: Yeah.

6 MR. DALLAL: -- that someone has to be the  
7 30(b)(6) witness. And that's usually, you know, what the  
8 defendants prefer, because then they can choose, you know,  
9 who they want to represent the company.

10 THE COURT: Yeah. I mean, sometimes it happens,  
11 sometimes it doesn't, if people kind of get things together.  
12 So I -- you know, I appreciate you all are trying to  
13 organize this in a global way, and the most sensitive issues  
14 are the people who are grouped for San Francisco and Taiwan.  
15 So I think trying to prioritize your discussions so that you  
16 can do those efficiently and not have people come back is  
17 the best thing.

18 So, sure, ask Judge Davila for extra time if he can  
19 agree to that so that you can accommodate maybe an extension  
20 of the Taiwan schedule. I think that's what Mr. Frost was  
21 proposing. That's the one that happens in October?

22 MR. FROST: September.

23 THE COURT: September. Okay. Maybe that'll work,  
24 maybe it won't. But I -- I just -- I think you need to  
25 exchange your notices as I've already said. So that'll be

1 due on August 7th.

2 I was a little bit surprised to see some of the  
3 individuals in this list show up as people for whom there's  
4 not a confirmed date, because in the July 18th letter that  
5 the -- let's see. Yes. I think it was submitted by both  
6 parties. It was jointly submitted on July 18th. At least,  
7 the DPPs tell me that Joe Lupica was confirmed for August  
8 17th, and now he's showing up on the list as an outstanding  
9 deposition date. So what happened?

10 MR. FROST: The reason that happened is because  
11 when we were meeting and conferring, DPP counsel told us  
12 that there was a six-week period of time that they could not  
13 be available for depositions, so -- and that included that  
14 date. So we released it, and now we're working on getting a  
15 different date. We have filled that date in with a  
16 different witness who will be testifying on August 17 and  
17 August 18.

18 THE COURT: Okay. And I was --

19 MR. FISHER: And that's actually -- if I may, your  
20 Honor, with respect, that's actually not accurate. What  
21 happened was that Mr. Lupica was identified as a witness who  
22 the parties jointly -- the plaintiffs jointly agree needs to  
23 be deposed for 11 hours. And we were told that as a result  
24 of that, Mr. Lupica's deposition needed to be moved.

25 MR. FROST: To which there was no objection and to

1 which we put a different witness in --

2 THE COURT: Okay. All right. This is -- you  
3 know, so here's what we're going to do. You're going to  
4 exchange your notices on August 7th. If these depositions  
5 are still not nailed down, you will come to court and you  
6 will enjoy my windowless jury deliberation room, where you  
7 will hammer out a schedule, okay? And I won't let you leave  
8 until you do.

9 So August 7th is the date when you have to exchange the  
10 notices, and you can -- how long will you need to -- I mean,  
11 the earlier you do the notices, the better. But if I have  
12 you come in on August 8th, will that be enough time for you  
13 to think about it? You can come in on August 8th and talk  
14 about it in person. That's what I'm suggesting that you do  
15 if you can't manage to do it on your own, because I don't  
16 know your complete schedule, and it's very hard for me to  
17 micromanage it for you. The purpose of today was to figure  
18 out what the roadblocks were. I think we've gotten rid of  
19 one of the roadblocks, which is give the notices and then  
20 maybe seek an accommodation of the schedule and the IPP case  
21 so that you can extend the period of time for the Taiwan  
22 depositions if you need to. But, otherwise, you all just  
23 have to coordinate it.

24 MR. FROST: One other issue, your Honor. And I  
25 think we should probably -- if we're going to have to do

1 that, I think we're probably going to figure this out. So  
2 we don't -- we actually do have Paul Roth on August 8th, so  
3 if we can do August 9th, if we have to.

4 THE COURT: Oh, okay.

5 MR. FROST: And then the other issue that we're  
6 having and the concern that we're having is, we've asked  
7 DPPs --

8 THE COURT: Yeah. Okay.

9 MR. FROST: -- for their witnesses, that they be  
10 11 hours. And we've been told they're not going to do that.

11 THE COURT: Yeah. The 11 hour thing matters,  
12 right? Okay. So both sides have asked each other for  
13 depositions that are 11 hours/22 hours, right?

14 MR. FROST: Correct.

15 THE COURT: That's the situation. Is there a  
16 problem with that, with the -- putting up a witness for --  
17 apart from scheduling, is there a merits problem with  
18 putting up a witness for 11 hours or 22 hours?

19 MR. FISHER: There is, with respect to the class  
20 representatives for DPPs, your Honor.

21 THE COURT: Okay. Why? What's the problem?

22 MR. FISHER: So, unlike the defendants in the  
23 discovery order, DPPs reserved a proportionality objection  
24 here. And then, candidly, the issue is that we just fail to  
25 see how having all three Radio City witnesses for 11 hours

1 when they are a class rep, and their testimony is about, did  
2 they buy -- did they purchase telescopes from Celestron or  
3 not, and they can't speak to the antitrust conspiracy, or  
4 anything along those lines, what the purpose is of 33 hours  
5 that these witnesses are, who are in their 80s.

6 THE COURT: So do you need them for 11 hours or --

7 MR. FROST: We don't know. We may. But we agreed  
8 at the time. That was the reason we said everybody will  
9 have the right to seek 11-hour depositions. And there was  
10 no objection at the time. We showed up to Maline Fish's  
11 deposition. She admitted to destroying years' worth of  
12 records. We shut it down at the time because Mr. Fisher  
13 represented he was going to drop that class rep. Now, he  
14 hasn't. We haven't even scratched the surface.

15 And just so we're clear, this is a DPP rep, which makes  
16 their entire business model and their history of  
17 transactions relevant to the issue of whether or not we  
18 caused them damage. So it's not an issue of just what they  
19 know about our business model. So, yes, we may need that  
20 time.

21 MR. FISHER: So, your Honor, if I may.

22 THE COURT: So -- well, I'm just going to say,  
23 nobody needs to reserve the ability to object on grounds of  
24 proportionality. You don't need to reserve it, you don't  
25 need to reserve it, and IPPs don't need to reserve it. If

1 you take a deposition for longer than is reasonably  
2 necessary, that's a problem. It goes both ways. But  
3 plaintiffs are telling me they don't know how long they need  
4 with a particular witness. These are important witnesses on  
5 the defense side. The defendant is telling me the same  
6 thing. I can't tell. So, presumptively, it's 11 hours. So  
7 schedule it. If they don't need it, then fine.

8 MR. FISHER: If I may, your Honor.

9 THE COURT: Yes.

10 MR. FISHER: We have given them three straight  
11 days for these witnesses for a long time, and we're -- we  
12 can easily schedule them. We've been asking them to  
13 identify the specific dates.

14 THE COURT: Great. Good.

15 MR. FISHER: So to the extent that's a concern --  
16 and that's why we're surprised to see them here.

17 THE COURT: So no 11-hour problem, then.

18 MR. FISHER: There is an -- that may well be  
19 briefed to the Court, your Honor.

20 THE COURT: Well, I don't want -- I don't want to  
21 -- it's going to work both ways. So, I mean, if I get a  
22 brief that says, I don't think this witness is important  
23 enough to warrant 11 hours, and I get another brief from Mr.  
24 Frost that says, I don't think that witness is important  
25 enough for 11 hours, what am I supposed to do, right?

1 MR. FISHER: Your Honor.

2 THE COURT: I mean, I'm going to let you take your  
3 depositions, and then -- you know, one thing I could do is  
4 -- and this will totally screw up your schedule. So I can  
5 say, well, it's seven hours, and then let me know. I'll  
6 look at the transcript, I'll see who's, you know, asked  
7 efficient questions or not efficient questions and what more  
8 you didn't ask. I mean, I don't want to have to do that.  
9 So you all need to compromise on this, okay? It's not about  
10 -- it's not about winning. It's a scheduling issue, okay?  
11 So just figure it out. And you may have to compromise, and  
12 you may have to compromise in order to get it done.

13 MR. FISHER: So, your Honor, if I may, this issue  
14 was raised with us for the first time last night. We -- I  
15 think there's a way and a compromise that can be reached,  
16 but we haven't had the opportunity to have that conversation  
17 with Mr. Frost. And I think it's here precisely so your  
18 Honor could experience that level of frustration and want  
19 throw up your hands.

20 THE COURT: No. No. No.

21 MR. FISHER: And if I may, I think the way to  
22 answer the question that you just asked, which is how can I  
23 decide which witnesses would warrant extended time or not,  
24 is to consider the fact that David Shen, for example, is the  
25 person at the heart of the antitrust conspiracy alleged in

1 this case and the Orion case in here. And my clients are  
2 people who bought telescopes.

3 THE COURT: You know, Mr. Fisher, it says in the  
4 stipulation at paragraph D, five, DPPs reserve the right to  
5 object to the number and length of depositions of DPPs'  
6 percipient witnesses on grounds of proportionality, which  
7 objection shall be resolved by the parties in accordance  
8 with paragraph four of my standing order. I don't have a  
9 joint discovery dispute letter. I don't want one. I want  
10 you all to work it out. But just talking about it in this  
11 hearing is not a particularly good use of anybody's time,  
12 right?

13 MR. FISHER: I understand.

14 THE COURT: So I really -- I encourage you all.  
15 You may have to give up something in order to get something  
16 and make this all work. Please keep that in mind, okay?  
17 Try to accommodate elderly witnesses. Try to accommodate  
18 the notion that somebody may be more or less important than  
19 somebody else for the merits of the case. Prioritize the  
20 people who really matter. And just don't sweat the small  
21 stuff that you don't really need. That's not a very useful  
22 guidance, I know, because everybody wants to prevail on  
23 every last issue, but you can actually be reasonable. I  
24 know you can. And is everyone available August 9th to come  
25 in and talk about it if you haven't reached total agreement



1 on everything?

2 MR. DALLAL: I mean, your Honor, a suggestion.

3 THE COURT: Uh-huh.

4 MR. DALLAL: Just, if we turn over -- we'll  
5 endeavor to do it sooner than August 7th. But if we do  
6 supply topics for some of the defendants on August 7th, I am  
7 not sure that that will give Mr. Frost enough time to say  
8 which witness will be -- you know, the 30(b)(6) for each  
9 defendant and for us to have any meaningful chance to talk  
10 and -- you know, work out dates before we come in, you know,  
11 August 9th.

12 So I was wondering maybe if the 15th, your ordinary  
13 Tuesday calendar, makes more sense. We also, by your order,  
14 have a weekly Thursday meet and confer, where we do get on  
15 the Zoom, you know, sometimes with Mr. Frost, sometimes with  
16 his colleague, Ms. Addie (phonetic). So we do speak. And  
17 maybe if we have a chance to do that after he receives the  
18 topics and has the chance to designate witnesses, maybe we  
19 can blast through a lot of it without the Court's  
20 intervention.

21 THE COURT: I'm happy to do whatever you all think  
22 will be most efficient and not disrupt your productive  
23 efforts already. But I'm just kind of doubtful that it's  
24 working so far. So if you want to meet on the 15th, that's  
25 fine. You're going to be talking to each other by

1 yourselves. So I have a full calendar on the 15th, and I  
2 will be busy. So I will welcome you into the courtroom and  
3 invite you into my jury deliberation room. If you tell Ms.  
4 Kratzmann that you're -- you still got things to work out,  
5 you're just -- and you're going to have to be fully prepared  
6 to work on the calendar, call your witnesses, figure out  
7 who's available. That's what you're going to have to do if  
8 you can't do it on your own. And it's like, I don't want  
9 you to have to come in and do that.

10 MR. FROST: Mr. Lee's deposition is on the 9<sup>th</sup> --  
11 on the 15th. So that's probably not going to be a good  
12 date.

13 MR. BORDEN: I think the point is for us to figure  
14 it out on our own, and I expect we probably can.

15 THE COURT: Well, that is the point. Yeah. Very  
16 astute. It's your -- the point is that you -- okay. But if  
17 -- is there a deposition on the 9th?

18 MR. FISHER: There's not, your Honor. And DPP is  
19 the least to be prepared to be here on the 9th.

20 THE COURT: Is there a deposition on the 10th?

21 MR. FISHER: There is.

22 MR. FROST: Yes. There are 10, 11, 14, and 15.

23 THE COURT: Okay.

24 MR. FROST: And the next available date would be  
25 August 16. I agree with Mr. Dallal that we probably do need

1 time to actually let the process work. So if we can set it  
2 for the 16th so we have something out there, I think that's  
3 probably the most appropriate way to do it.

4 THE COURT: The 16th. So that'll be next  
5 Wednesday.

6 MR. FROST: Two Wednesdays.

7 THE COURT: Sorry, two weeks. Two weeks. I just  
8 don't want us to linger that long. You have too much to do.

9 MR. FROST: Well -- and it's not -- in the  
10 meantime, we have depositions on August 7, 8, 14 -- 7, 8,  
11 14, 15, 17, 18. So we're moving.

12 THE COURT: All right. So let me just -- let me  
13 just give you some instructions. The notice is by August  
14 7th. The time required -- best estimates of time required  
15 -- if you require the maximum, okay, but use some  
16 discernment and judgment about the time required -- that you  
17 really require. And if you need to go over, okay. But for  
18 planning purposes, the time that you really need, not the  
19 time that you could possibly conceivably have under the  
20 stipulation. You have to exchange that with each other by  
21 August 9th. So after you get the notices for any  
22 outstanding depositions that have not been scheduled, you  
23 have to exchange the time required, okay?

24 And then in terms of dates, each side has to supply the  
25 other with dates. You can't just not supply the dates. And

1 I'm not sure what guidance to give you about, you know,  
2 supplying the dates, but you need to supply dates on which  
3 the witness is available within the time -- now, I'm a  
4 little bit concerned about -- I guess, Mr. Fisher, you have  
5 trial that is taking you out of commission for some -- are  
6 you suggesting that depositions can't occur during that  
7 time? Your colleagues, they can take depositions and  
8 defend?

9 MR. FISHER: Quite the opposite, your Honor. We  
10 -- sorry, but this is Mr. Fisher. Quite the opposite, your  
11 Honor. We have scheduled depositions during the period that  
12 I'll be out on trial.

13 THE COURT: Okay. So that's not a problem. Okay.

14 MR. FISHER: That's correct.

15 THE COURT: So, fine, because you all have big  
16 firms, lots of people. You can -- big enough firms. You  
17 can have other people doing work. Okay. So, you know, I  
18 think it's helpful to have enough dates for -- you'll have  
19 the time required by the other side. So then you can  
20 propose dates for the witnesses that correspond to the time  
21 required. And if you need to have an accommodation, like  
22 this witness can't sit for consecutive days, they have to  
23 sit for every other day or something like that, put that in  
24 your proposal.

25 But I want you to be able to exchange dates by, let's

1 say -- where's August? Can you do that by the 11th? So if  
2 you get the time requirements by the 9th, can you exchange  
3 dates by the 11th? You've already done a lot of this work.  
4 So you already know a lot of the dates of the witnesses'  
5 availability. So this is just refinement. So the  
6 plaintiffs are nodding their head.

7 MR. FROST: You just said -- you just said August  
8 9 is when we get the estimates. You meant August 7th?

9 THE COURT: No. So August 7th, you get the  
10 notices. You get some time to look at the notices. Then by  
11 August 9th, you get the requirements, unless you can provide  
12 it up by August 7th. But this goes both ways. So  
13 defendants will say, we need this amount of time with this  
14 witness, right? And the plaintiffs will say, we need this  
15 amount of time with this witness. I guess that depends on  
16 who's designated though, right?

17 MR. FROST: Right.

18 THE COURT: How quickly can you make your  
19 designation decisions if you have notices by the 7th?

20 MR. FROST: By the 9th.

21 THE COURT: Okay.

22 MR. FROST: And the only reason it'll take that  
23 long is because we've got people who are on the other side  
24 of the world.

25 THE COURT: I see. All right. So the

1 designations will be by the 9th. That makes sense. Okay.  
2 And then it will go back to whoever is the requesting party  
3 to say, okay, given that witness A is both an individual  
4 deponent and a designee, we think we need this much time  
5 with that person. Is that how you would like to do it?  
6 Does that make sense?

7 MR. FROST: It does.

8 THE COURT: Okay. So then that would mean that  
9 you would be doing that exchange by the 11th. And then can  
10 you exchange proposed dates by the 14th, dates of  
11 availability for your respective witnesses who have been  
12 noticed or designated? Does that timing work?

13 MR. FROST: I expect we'll -- I expect we'll be  
14 able to make it work.

15 THE COURT: Does that work for plaintiffs?

16 MR. FISHER: That's for the date exchange, your  
17 Honor. August 14th?

18 THE COURT: Yes. For the proposed dates.

19 MR. FISHER: Yes, your Honor.

20 THE COURT: Okay. So that's for any witnesses who  
21 are -- and you don't have to wait until that date. But if  
22 the individual witness is likely to be a 30(b)(6) designee  
23 for anything, then you'll need to -- you'll need to take  
24 that into account.

25 Okay. So let's have that schedule. I'll put that in

1 an order. So the 7th for the notices, the 9th for  
2 designations, the 11th for time limits or time requirements  
3 -- estimated time required, and the 14th for exchange of  
4 available dates. Okay. But, you know, like I said, don't  
5 wait. If you can accomplish this sooner rather than later,  
6 that's great.

7 I don't know that there's anything else that I can do  
8 usefully to help you on this. I think I should ask for a  
9 status report on where things stand by the 16th, and then I  
10 will figure out what to do. So, instead of hauling you in,  
11 I'll wait and hear your report, because maybe you won't need  
12 my help or my coercion. Okay. Does that sound okay to  
13 everyone?

14 MR. FROST: Very good, your Honor.

15 THE COURT: Okay. Status report by the 16th. All  
16 right. Anything else for today? Mr. Borden?

17 MR. BORDEN: Not from DPPs, your Honor. We  
18 appreciate your help and coercion.

19 THE COURT: Okay.

20 MR. BORDEN: And I appreciate the promotion to a  
21 big firm.

22 THE COURT: All right. Maybe that wasn't quite  
23 right, but bigger than some other firms. Okay.

24 MR. DALLAL: We'll just note the coercion is  
25 helpful.

1 THE COURT: Coercion is helpful. Thank you.  
2 Anything further from the defendants?

3 MR. FROST: Nothing, your Honor. Thank you for  
4 your time.

5 THE COURT: All right. Thank you very much. Have  
6 a good day. Court is concluded.

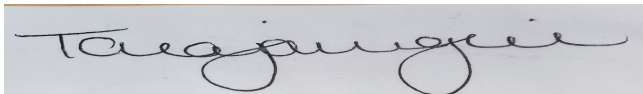
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Tara Jungi", is displayed within a rectangular box.

Echo Reporting, Inc., Transcriber

Friday, August 4, 2023